THE PUBLIC PHILOSOPHY OF JOHN DEWEY AND THE EVOLUTION OF 'LAW ENFORCEMENT'

A Thesis

by

MICHAEL L. PATTERSON

Submitted to the Office of Graduate Studies of
Texas A&M University
in partial fulfillment of the requirements for the degree of

MASTER OF ARTS

May 2004

Major Subject: Philosophy

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John J. McDermott (Chair of Committee)	Gregory F. Pappas (Member)
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ABSTRACT

The Public Philosophy of John Dewey and

the Evolution of 'Law Enforcement.' (May 2004)

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This thesis identifies the convergence between John Dewey's ideas regarding the public and the evolution of law enforcement practices. There are four areas covered, those being responses to major shifts in cultural activities and assumptions, learning as continuous, Dewey's ethics and the role of discretion in law enforcement, and community as participatory and inclusive. Dewey's ideas in these four areas are explained and examples are provided that demonstrate the convergence. Particular attention is given to the changes brought about by the migration from the professional model to the community policing model. The thesis also claims that both models are necessary for law enforcement to have a sufficient repertoire to provide their services and that deciding which model to use should be based on what the task is. It also states that law enforcement should be open to future developments that can improve how law enforcement services are provided.

To

Lee and Mary Lou-

my first teachers in pragmatism

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CHAPTER I

INTRODUCTION

Although rarely cited, the work of John Dewey is subtly present in the development of both theory and practice as found in 'law enforcement.' To this end, I shall discuss four areas of concern in which Dewey's thought and the evolution of 'law enforcement' converge. These four areas are:

1. Response to major shifts in cultural activities and assumptions, for example, the Industrial Revolution (technology)
2. Learning as continuous
3. Dewey's ethics and the role of discretion in 'law enforcement'
4. Community as participatory and inclusive

The examples used to demonstrate the influence of Dewey's thought in law enforcement will be taken from the time period of the 1960's through the present. It is during this time period that some of the most dramatic changes in the history of law enforcement occurred. Landmark Supreme Court decisions, racial issues, rising and more violent crime rates, and lack of communication between the police and the citizens they served are just some of the issues that have been addressed and continue to be issues that need attention. Many of the examples will be used in more than one chapter. These issues are all intertwined, and to fully address one of them we must take into consideration the others.

There are two latitudes I will take regarding this thesis. First, the terms law enforcement, police, and officers are all referring to those professionals that have "peace

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The style and format conform to *The Chicago Manual of Style*, 15th edition.

officer" [1] duties. Sheriffs and their deputies, constables, and state police are included in this mix. Second, the references to legislation are limited to laws enacted in Texas. These are the ones I am personally experienced with and have the best grasp as to how they relate to Dewey.

Chapter II will discuss how Dewey identified artifacts of technology, that is, things produced by human work, and how they have had an effect beyond their original intent. He also identified how not only actual artifacts of technology, but that *how we think* as a part of technological change.[2] The internal combustion engine, computers, and advancements in medicines are just some of the artifacts that have had an effect well beyond what their inventors imagined. Examples of how we think also include changes in how experiments are conducted.

We can find examples in law enforcement of how our thinking can change our viewpoint by looking at the three eras leading up to our current period of law enforcement, the Political, Professional, and Community Policing eras.[3] The Political era generally began in the mid 1800s and ran through the 1930s. The Professional era, sometimes called the Reform era, ran from the 1930s to the 1970s, when the Community Policing era began. Each of these changes came about largely because of a change in ideas of how law enforcement should be conducted. The Professional era came about as a reaction to the pervasive corruption in the Political era. The Community Policing era came about as a reaction to the growing ineffectiveness of the Professional era. We are currently witnessing another change: Academics and practitioners in law enforcement are

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[1] *Texas Code of Criminal Procedure*, Chapter 2, General Duties of Officers, Article 2.13, http://www.capitol.state.tx.us/statutes/cptoc.html

[2] "A tool is in this sense a theory, a proposal, a recommended method or course of action." *John Dewey's Pragmatic Technology*, Larry Hickman, (Bloomington: Indiana University Press, 1990), 21.

[3] Vincent E. Henry, *The Compstat Paradigm* (Flushing: Looseleaf Law Publications, Inc., 2001), 73.

realizing that there has never been a clear definition of community policing and that many practices that were labeled community policing were really policing practices of the Professional model. It is beginning to be clear that one true, best way does not exist, and that each community, within Constitutional limitations, can have a different way of addressing similar problems effectively, legally, and ethically.

The major shifts in the culture of law enforcement occurred not only from ideological changes, but from changes in artifacts and skills. The advent of the automobile, telephones, radios, and other artifacts of the Industrial Revolution changed dramatically how police officers responded to calls for service and made the transition from the Political to the Professional era much quicker. Whereas before, the possibility of a quick response to a crime was almost impossible, it became possible for a citizen to call a police department and have an officer available within minutes. This was viewed as a more efficient use of personnel and officers were given larger areas to patrol since they could be notified quickly and move a much greater distance in a shorter time.

The changes in ideology, skills, and artifacts were not all positive. For example, the rapid response made possible by improved equipment and the accompanying ideological change to the professional model led to bigger patrol areas, which in turn led to a disassociation with the citizens the police served. Nonetheless, Dewey warned that we must proceed, but with good use of reasoning and the ability to adapt when we observe the results we were hoping for are not forthcoming; that is, we must assess the consequences of every change. Failure to maintain an intimate contact with the persons the police were serving was one result of the changes in this example. Law enforcement's realization of this led to the gradual development of community policing.

The changes that affected how law enforcement provided services were caused by changes in ideology, skills, and artifacts. The effects of these have been, and continue to be, intertwined. Expectation of how these services should be provided, what kind of services should be provided, and even what kind of behavior would be considered acceptable changed as time passed, and this process is continuing today.

Chapter III will discuss how this continuous process is deeply connected to learning. Note that each successive era built upon the successes and mistakes of the previous eras. Both successes *and* mistakes are mentioned because we sometimes ignored the lessons from mistakes and continue down a poorly reasoned path. Dewey stated that learning occurs in various manners, both consciously and subconsciously, and sometimes we need to have several failures before the better way becomes apparent. Again, moving forward using reason, coupled with experience, can give us some idea of the potential of the changes we implement.

Chapter IV will address how ethics and the use of discretion in law enforcement demonstrate remarkable likenesses to Dewey's theories. Dewey disagrees with those who state there is a dichotomy between Kantian and Utilitarian theories. Indeed, he feels they are highly dependent upon each other to establish a complete set of ethics. The same applies in law enforcement. We want our police to obtain a certain Utilitarian result (reduce crime, stop criminal activity), but we want them to do so in a certain Kantian manner (follow the laws). The very reason police have policies and procedures, and laws are enacted covering police conduct, is to control the behavior of the police. At the same time, these laws are written in such a manner that the intent is to allow the police to perform their mission of protecting the public. The fact that they are changed (added to or

taken from) by legislators of the various levels of government, is an example of how our world is changing constantly and these laws are in need of adjustment (just as everything else has to adjust with a changing world). We *learn* that there are better ways; it is just that sometimes we do not use our technological abilities involving thinking to come up with a more lasting solution.

Chapter V will demonstrate the similarities between Dewey's theories regarding the public and community policing. I will also argue that community policing is not the only method for solving law enforcement problems. The United States was established on the premise that the government gets its power from its citizens. Dewey argues that all citizens must be included in this process and that exclusion and apathy undermine the system. Community policing is an attempt to reduce both of these problems but is not the sole source for accomplishing the goals of law enforcement: to protect and serve all the people in the community.

The final chapter will further discuss the interconnectivity between the four topics discussed in the previous chapters. Technological changes in ideology, skills, and artifacts offer examples of the interconnectivity of these four issues. Our ability to learn enables us to see how technology, using Dewey's definition that includes thinking as a form of technology, affects how we might cope with the problems it brings. Technological changes provided us with an environment of rapid change that necessitates the need to adapt (learn) to be effective. Learning teaches us how ethics affects our ability to be inclusive of all members of our community. Inclusiveness in turn teaches us how being ethical can bring about good results.

If the foregoing notions seem over-generalized, it is because there are seldom clear-cut answers to any of the problems that arise from interaction between law enforcement and the citizens it serves. One part of the community wants the police to focus on crime, another wants them to focus on traffic issues; one part wants the police to use a community involvement approach, another wants a strict enforcement approach. All the while, the police are trying to maintain a balance between satisfying community wants and fulfilling these wants within a Constitutional context. As Dewey states, "Singular things act, but they act together. Nothing has been discovered which acts in entire isolation."[4]

[4] John Dewey, *The Later Works, 1925-1953,* ed. Jo Ann Boydston, vol. 2: *1925-1927*, "The Public and Its Problems" (Carbondale: Southern Illinois University Press), 250.

CHAPTER II

DEWEY'S TECHNOLOGY AND 'LAW ENFORCEMENT'

This chapter will identify how Dewey's views on the effects of the Industrial Revolution (or to use Dewey's words, technology) apply in law enforcement. As in the general population of the United States, law enforcement experienced shifts in activities and assumptions. These shifts included both influences from physical technology (new inventions and improvements to other machines) and from changes in how we deal with problems. Dewey's view of how technology affected humanity is quite different from the common understanding of that era. Rather than see the Industrial Revolution as beginning at a certain point in history, he sees it as a continuation of previous technological advances.[1] To Dewey, "there is a historical thread from the simple tools and implements of our ancestors to the complex machines of contemporary life. There is a vestige of a bent stick in the most up-to-date plowing equipment."[2]

I would like to note that Dewey has generally been ignored by many of the writers in the area of the philosophy of technology. A cursory review of books covering how technology affects society reveals multiple ideas that are very similar but offer not even a hint that Dewey had put forth anything in this area.[3] For example, in *The Whale and the*

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[1] "The scientific revolution of the seventeenth century was the precursor of the industrial revolution of the eighteenth and nineteenth." *The Later Works, 1925-1953*, John Dewey, ed. Jo Ann Boydston, vol. 2: *1925-1927*, "The Public and Its Problems" (Carbondale: Southern Illinois University Press), 344.

[2]Larry A. Hickman, *John Dewey's Pragmatic Technology* (Bloomington: Indiana University Press, 1990), 10.

[3] The author took a random selection of books that dealt with the philosophy of technology. There was not a single reference to Dewey in any of them: Stuart Hill, *Democratic Values and Technological Choices*, (Stanford: Stanford University Press, 1992); Edward Tenner, *Why Things Bite Back* (New York: Alfred A. Knopf, 1996); George Bugliarello and Dean B. Doner, eds. *The History and Philosophy of Technology*

Reactor,[4] Langdon Winner proposes a theory that has an uncanny resemblance to Dewey's thoughts on being and doing. Winner states we often oversimplify our notion of how technology affects us.[5] He calls the oversimplification by two categories *making* and *use* (akin to Dewey's being and doing):

> The deceptively reasonable notion that we have inherited from much earlier and less complicated times divides the range of possible concerns about technology into two basic categories: *making* and *use*. In the first of these our attention is drawn to the matter of "how things work" and of "making things work." We tend to think that this fascination of certain people in certain occupations, but not for anyone else. "How things work" is the domain of inventors, technicians, engineers, repairmen, and the like who prepare artificial aids to human activity and keep them in good working order….. What others do care about, however, are tools and uses.[6]

Winner argues, like Dewey, that we should take both into consideration when trying to assess the effect of an act or certain technology. He argues that it is a mistake to state that new technology is effect-neutral; that technology brings with it the ability to change the meaning of our activity.[7] This resembles Dewey's idea as stated by Larry Hickman that "tools and machines have their own momentum,"[8] by recognizing that a tool brings with it an effect or consequence (sometimes unintended). In fairness to Winner, he and two of the other authors of the books I reviewed published before Hickman and may never have thought to look at Dewey for a view on how technology affects us. But two of the other

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(Urbana: University of Illinois Press, 1973); Langdon Winner, *The Whale and the Reactor* (Chicago: University of Chicago Press, 1986); R.C. Dorf, *Technology Society and Man* (San Francisco: Boyd & Fraser, 1974).

[4] Langdon Winner, *The Whale and the Reactor* (Chicago: University of Chicago Press, 1986).

[5] "The language of the notion of "use" also includes standard terms that enable us to interpret technologies in a range of moral contexts. Tools can be use well or poorly and for food or bad purposes; I can use my knife to slice a loaf of bread or to stab the next person that walks by. Because technological objects and processes have a promiscuous utility, they are taken to be fundamentally neutral as regards to their moral standing." Ibid., 6.

[6] Ibid., 5.

[7] "If the experience of modern society shows us anything, however, it is that technologies are not merely aids to human activity, but also powerful forces acting to reshape that activity and its meaning." Ibid., 6.

[8] Hickman, *John Dewey's Pragmatic Technology*, 11.

authors, Hill and Tenner, published two and four years after Hickman. A cursory title search would have turned up Hickman's book as a possible source.

The prior example demonstrates how Dewey's contributions in the area of philosophy of technology have been ignored by at least some. However, this chapter is not about how historians and other philosophers in the area of technology have ignored Dewey's theories. Rather, it is about establishing that there is a parallel in the academic study of law enforcement that parallels Dewey's theories. The reason to even mention the lack of reference is that it also occurred in law enforcement.

A search of law enforcement periodicals and books resulted in few citations of Dewey's works.[9] It may be that for law enforcement writers, Dewey's lack of *direct* reference to law enforcement or criminal justice caused them to look elsewhere. But Dewey's ideas often had widespread, if not universal, application. In *The Public and Its Problems*, Dewey addresses the problems of obtaining and keeping an effectively representative government but the references are to laws and government, rather than specifically to law enforcement. Nonetheless, Dewey's theories, possibly obtained through some sort of osmosis, have made their way into how law enforcement is performed today. I am assuming we are talking about *quality* law enforcement. There are plenty of examples too, where law enforcement has failed miserably and we can demonstrate a total lack of understanding of Dewey's theories or any kind of pragmatic approach.

To offer some explanation as to how this may have happened, it has been my experience in the law enforcement community that it views itself as "different" from the

[9] The author conducted a search of abstracts in the National Criminal Justice Reference Service found five references to John Dewey out of 180,000 assorted resources available in this reference service.

rest of society. Police officers have chosen to do a job that is often unappreciated by the very benefactors of our work, that is highly publicized more often than not when failures occur, and is often considered the resource of last resort. Yet many remain on the job, answering to what they believe is a "higher calling." This often leads to a misunderstanding, or mistrust, of those that attempt to prescribe how to perform law enforcement work without an extensive background in that area. Again, the scope of this paper, however, is not to discover how or why Dewey has been ignored as a source or to demonstrate the psychology with law enforcement groups. It is to demonstrate several examples of how Dewey's theories regarding public service have come to be in law enforcement.

To demonstrate where Dewey's theories regarding technology have come to be in law enforcement, we have to understand what these theories are. As stated previously, Dewey did not see technology as starting during the Industrial Revolution. He also did not limit his theories to physical inventions and their effects. Instead, he included *how we think* as a part of technology. This was as much a part of progress as were any devices that were invented. Dewey also felt that our physical skills were a part of technology. In other words, for Dewey, thinking and skills were tools. Just as improvements in certain artifacts led to a better quality of life, so, too, did improved ways of thinking and manufacturing. By changing how we think to focus on improving how we make judgments of the activities we do, we could reach a more objective measurement of our progress. The same applies to our techniques. Improvements in manufacturing, or in the case of police, skills in performing law enforcement duties, improved the quality of our results. Dewey would remind us not to think of these three subjects (artifacts, skills,

thinking) as separate. We only separate them for ease of explanation. In reality, they are intimately connected. Improved thinking allows for an improved artifact which allows for improved skills. This is not to say which comes first or last. Depending on the situation, any order of these subjects could happen. Improvements in phones and radios (artifacts) allowed for an improved response time (skills) which created the opportunity to rethink how officers were deployed (thinking); improved case management (thinking) has led to improved case investigations (skills) which created a demand for improved devices to conduct investigations (artifacts). The bottom line is that improvements in law enforcement have developed from all three sources and these developments have had major influences on how policing is done. For artifacts, there are the examples of phones radios, computers, pistols, and impact weapons; for skills there are improved interview techniques and better takedown methods; for thinking, there are diverse methods of finding solutions such as problem solving, case management and incident command.

When making statements like this we must keep in mind that Dewey did not believe we could have a priori knowledge.[10] By constantly reviewing how we think, we can see where we have made mistakes and seek to improve on how we make judgments of our activities. The net result is that we will never know with certainty what the outcome of a particular action may be, but we can come closer to a proximate estimate based upon a combination of our *a posteriori* knowledge and our ability to reason. With each experience, as a failure or as a success, we gain knowledge that can aid us in *estimating* what the results of another action may be.

[10] "For in its strict sense, knowledge can refer to what *has* happened and has been done. What is still *to be* done involves a forecast of a future still contingent, and cannot escape the liability to error in judgment involved in all anticipation of probabilities." *The Later Works, 1925-1953*, Dewey, vol. 2: *1925-1927*, 346.

Dewey's theories on technology have examples in law enforcement. A short history of law enforcement is in order to set the stage for providing these examples:

> The history of American policing is generally divided into three distinct periods or eras, each with its own set of characteristic ideologies or guiding philosophies. These periods are generally known as the Political Era, the Reform or Professional Era, and the Community Policing Era. For policing as an institution as well as for individual agencies, the guiding philosophy of each era defines overall missions and goals, determines the kind of policies and practices that are developed, and generally shapes the way departments are organized and managed. Thus specific organizational practices and management paradigms generally corresponded to the ideology prevailing during a historic period.[11]

The Political Era generally began in the mid 1800s and ran through the 1930s. During this era, policing was thought of as an extension of the current politician in office. Jobs in police forces were often made available based upon affiliation with the ruling party. The beginning of the Reform or Professional Era loosely coincided with the advent of new management styles that arose from the Industrial Revolution. It ran from the 1930s to the 1970s, when the Community Policing Era began. The Professional Era was a reaction to the corruption and lack of consistency in how law enforcement was provided to the public in the Political Era. The Community Policing Era was an outgrowth of the public's reaction to the lack of change (or better put, lack of adaptation to changes is society) wrought by a prolonged presence of the Professional Era.[12]

The management techniques that arose from Professional Era were highly influenced by the writings of Frederick Wilson Taylor.[13] In retrospect, one can see a

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[11] Vincent E. Henry, *The Compstat Paradigm* (Flushing: Looseleaf Law Publications, Inc., 2001), 73.
[12] "The height of police isolation came in an era of growing professionalism, when the prevailing ideology was that the professional knew best and when community involvement in crime control was seen by almost everyone as unnecessary." *Understanding Community Policing*, Community Policing Consortium (Washington D.C: United States Department of Justice) Chapter 2, http://www.communitypolicing.org.
[13] "Many of the management principles emphasized and adopted by Wilson and the early Professionals were grounded in the "scientific management" principles articulated by Frederick Winslow Taylor," Henry, *The Compstat Paradigm*, 85.

parallel develop between efficiencies gained in production of goods and management styles. As Henry outlines, "Taylor's theories evinced a strong belief in the 'one best way'-the idea that there was a single best way to perform any operation or task."[14] This took hold throughout law enforcement by way of a text written by O. W. Wilson, *Police Administration*.[15] Just as the assembly lines of manufacturing produced a single method (generally) of production for certain products, so did this "bible" of police administration identify a single best method of management. It espoused a high reliance on statistical analysis of workload studies to establish patrol schedules and keep political influences at a minimum. This development of a style that was strongly based on scientific methodology was successful in removing much of the out and out corruption of the Political Era.

It also brought about the kind of problems Dewey warned us about. The theories proposed by Wilson were powerful tools that created a whole new atmosphere of how the job of policing should be done. As the influences of these new principles led to sweeping reforms in how law enforcement proceeded, the watchful eye of skepticism was set aside. The methods solved the problems of corruption and inefficiencies but they failed to evolve quickly enough when new challenges came about. In other words, by assuming we had found a "one best way" we failed to acknowledge that new situations will require new approaches.

The Professional Era was not the only one guilty of this mistake. The Community Policing Era was a paradigm shift that was also hailed as the answer to law enforcement's

[14] Ibid.
[15] Ibid., 84.

problems. But it brought with it another problem, that being one of definition.[16] As the Professional Era went the way of standardization, the Community Policing Era has been one of extreme diversity of just what is meant by "community policing." Just about every new program that comes into law enforcement tries to find some way to get labeled as community policing, if for no other reason than that was what grants were funding. If a department could find some sort of way to connect their project to community policing, it improved its chances of being funded. But federal funding was probably a lesser incentive to jump on the community policing bandwagon. Beginning in the 1960's, rising crime rates, race riots, and sweeping court decisions that challenged the way police business was conducted were some of the issues that created the demand for change.[17]

The same issues (funding and definition) are still affecting the direction of police departments. Only now, a new paradigm has taken over for community policing. The results of the terrorist attack on September 11, 2001 (commonly referred to as 9/11) diverted much of the funding and attention to anti-terrorist functions (otherwise known as homeland security). It also caused our legislators to enact a series of laws that gave federal law enforcement some powers that they did not previously have. Assuming these new powers will be effective in fighting terrorism, the question still remains at what cost to our individual freedoms? It is true that technology has created new challenges to discovering the activities of those that would cause us harm. It is also true that we must proceed (enacting new laws; changing the focus of law enforcement) at a rate that does

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[16] "To date, no succinct overview of community policing exists for practitioners who want to learn to use this wide-ranging approach to address the problems of crime and disorder in their communities." *Understanding Community Policing*, Community Policing Consortium, Chapter 1.

[17] "The burst of ideas arguments and protests during the 1960's and 1970's mushroomed into a full-scale social movement….Police became the targets of hostility, which ultimately led police leaders to concerned reflection and analysis." *Understanding Community Policing*, Community Policing Consortium, Chapter 2.

not hamper our progress in providing for the protection of our citizens. But we must be vigilant for others that will take advantage of the situation to promote their own agenda while cloaking it in the clothes of “homeland security.”

As these examples demonstrate and as stated before, Dewey’s idea that technology was not limited to new or improved machines; he identified thinking and skills as part of technology. Just as a machinist uses his tools to provide a product to use, so does a mathematician use his theories to provide his product. But Dewey does not stop there. He believes these three are entities (artifacts, physical skills and mental skills) are intertwined. Just as in other areas, such as ethics, Dewey felt that to claim one best way or any finality in any answers to our questions was to fail to acknowledge all the factors involved. The entwining is not limited to various factors in single areas (for example, ethics and learning). Depending on the situation, there is an intermingling of all areas to various degrees.

It is as if we must deal with problems as science picks the best way to describe what is happening in a particular object. For example, we use magnetic theories to describe what is happening when a compass points north. We use gravitational theories to describe what is happening between to planets. When dealing with physiological issues, we often apply homeostasis theories to describe what we see. Just as we use these various theories to describe what is happening within these assorted areas, so too, do we have various methods of proceeding to achieve certain goals. In other words, we pick the right “tool” to do the job at hand. If we wish to clear a single diseased tree out of an area so that it will not infect other trees and thus destroy the entire forest, we may select an ax or saw. But if we know that chopping down the tree will encourage the spread of the disease

rather than stop it, we might choose to use a form of selective burning to destroy the diseased tree. We might even have to resort to destruction of a wide area of a forest to prevent the spread of disease.

This same way of thinking also has made its way into law enforcement. In a properly handled hostage situation, it is not the SWAT team, nor the negotiation team, that decides the overall strategy. It is the situation commander, using input from all sources that makes the decision as to how to proceed. If the situation is stable, the negotiation team takes the lead; if the suspects start shooting hostages, the SWAT team takes action. The same flexibility is applied in various investigations by detectives. There are a few basic questions that all investigations need answered. A description of the suspect, which way did he go, could the witness identify the suspect if he or she saw him again are some of the common questions. But to assume that an investigation of a rape should proceed with the same attitude as the investigation of a burglary is to fail to see the nuances in each type of investigation. Most departments have the first responding officer take the full report for a burglary. Although the officer must be aware that any victim of a crime can have feelings of being violated, the officer can usually ask questions of a burglary victim, such as where the victim was when the theft occurred, was the item locked, did the victim notice anyone or anything unusual just before the theft occurred without worrying about whether the victim is thinking the officer is being accusatory. The victim is usually open to an explanation if any of these questions strike them as accusatory.

But a rape victim requires a different approach. The initial interview by a patrol officer should “be limited to obtaining only the information necessary to initiate the

investigation and set in motion evidence collection and a search for the offender."[18] A person who has had their home burglarized is happy to have the officer do a search for evidence. On the other hand, part of the crime scene for a rape is the victim.[19] The victim usually undergoes a thorough medical examination. The issue that, "The subject of sex make many people feel uncomfortable."[20] adds to the trauma that most rape victims feel.

There is a major thread running through all of the discussion so far. It is that we are trying to control the consequences of our acts. This is a major point that is pervasive throughout Dewey's writing. As this relates to law enforcement, Dewey points out that our laws are established as a method of creating predictability. We establish laws to have a method to deal with one another and failure to act within the laws has certain consequences.[21] But this does not establish a reason for the laws. It is only a method to provide predictability.[22] He goes on to point out that this same line of reasoning is applied in other areas of government. In other words, the reason a law is made or method of operations is followed is because it has worked in the past. With this reasoning comes the idea that since a certain act (procedure) has always been done a certain way, we should continue to do it that way. Seldom do we look at the basic premise as to why we are doing things a certain way. It may even be that some expert validates the method and we continue on in that manner. This same problem permeates law enforcement and has shown itself in various forms. The New York City Police Department's Compstat

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[18] F. D. Jordan, *Sex Crime Investigations* (Boulder: Paladin Press, 1996), 113.
[19] "The first officers on the scene of a rape or sexual assault must understand that the victim is part of that crime scene." Ibid., 112.
[20] Ibid., 114.
[21] "What happens is that certain conditions are set such that *if* a person conforms to them, he can count on certain consequences, while if he fails to do so he cannot forecast consequences." *The Later Works, 1925-1953*, Dewey, vol. 2: *1925-1927*, 270.
[22] "Reason expresses a function, not a causal origin." Ibid., 271.

project[23] is an example where this problem (at least temporarily) has been identified and has made adjustments to overcome it. Prior to implementation of this system, there were many criminologists that felt, "that crime, social disorder, and the other social problems that typically fall within the purview of the police are exclusively caused by social problems such as unemployment, economic trends, a poorly educated or insufficiently socialized populace, or other factors that are simply beyond the immediate capacity of the police to address."[24] By Henry's account, this belief was also pervasive within the NYPD's command ranks. Coupled with a growing belief by the public of police ineffectiveness, several incidents brought forth the demand for a change.[25] Once this premise was challenged, and methods were devised to test its veracity, it was discovered that the premise was not quite as stable as previously thought. Once they got out of this mindset, the crime rate in New York City dropped tremendously.[26]

The line of thinking that created this challenge was first demonstrated by Phillip Zimbardo[27] in an experiment with unattended vehicles and later espoused by George Kelling and James Q. Wilson as the "Broken Windows" theory.[28] Of course, no act is without its consequences, be it good or bad. It is often the case the originally stated goal is not what we end up wanting as we proceed through our activities. The professional

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[23] Henry, *The Compstat Paradigm*, 6.
[24] Ibid., 41.
[25] "Three significant events – the Crown Heights riots of August and September 1991 (resulting from a vehicle accident in which a young African-American child was struck and killed by an auto driven in the motorcade of a prominent Hasidic rabbi), the Washington Heights riots in July 1992 (resulting from the shooting death of an armed drug dealer in a gun battle with a plainclothes officer), and the Mollen Commission report on police corruption – did little to enhance public confidence in the police…" Ibid.
[26] Uniformed Crime Reports (UCR), for 1990 & 2000.
[27] Zimbardo does not coin the phrase "broken window" but it is very clear how the phrase has been attributed to his paper, "The Human Choice: Individuation, Reason, and Order versus Deindividuation, Impulse, and Chaos," *Nebraska Symposium on Motivation* (Lincoln: University of Nebraska Press, 1969), 287-293. The original study was done with two automobiles in separate neighborhoods. At one point the window of one of the cars is smashed deliberately to elicit a response.
[28] James Q. Wilson and George L. Kelling, "Broken Windows: the Police and Neighborhood Safety," *Atlantic Monthly*, March 1982, 29-38.

style produced consequences that changed what outcomes were wanted. We are finding out that the community policing style (whatever definition we end up using) also has shortcomings.

This is not to say that we must proceed with such caution least we do something that ends up being wrong. Some things are only discovered by making mistakes. Even the popular trends in management training allude to this.[29] We might not have had the incentive to find out how the various forms of community policing work if we had not learned from the problems brought about by the use of the professional style. It is to say is that as we proceed, we must take pause at opportune times to see if our goals are still correct and are we still doing things that will achieve those goals. If either of these changes, we must make the appropriate adjustments.

One of these adjustments was the realization that the police alone are not as effective as having a population that helps in making our society a safe one. Dewey pointed out that an absence of participation by citizens leads to a government that does a poor job of representing its people.[30] This applies in many ways, not only in regards to government and citizens, but from one government agency to another. It also applies to the mission of the police, that is, to protect the public from crime and its effects. For Dewey, inclusion and participation by the citizenry were necessary elements for government to be successful. There are various ways in which the police can become less effective due to non-participation by others. The police have often taken on responsibilities in the absence of other responsible groups. Mental health service

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[29] Thomas J. Peters and Robert H Waterman, Jr., *In Search of Excellence* (New York: Warner Books, 1982), 69, 134-150.

[30] "It may plausibly be asserted that the prime obstruction lies in the superstitious belief that there is a public concerned to determine the formation and execution of general social policies." *The Later Works, 1925-1953*, Dewey, vol. 2: *1925-1927*, 312.

providers, parents, repair services and counseling services, are just some of the groups that often abdicate their responsibilities. The police, being the agency of last resort, end up trying to find some solution, albeit temporary and often poor at best. This is all I will say about this as this point as I will discuss this issue further the chapter covering the community and how it needs to be participatory and inclusive.

So, how does this line of thinking apply to the effects of the Industrial Revolution and Dewey's thoughts on technology, including how we think? The advent of several technological advances created the situation where the police became less connected to the communities they served. This is described in a monograph produced by the Community Police Consortium:

> This social distancing was also reinforced by technological developments. The expanding role of auto mobiles replaced the era of the friendly foot patrol officer. By the 1970's, rapid telephone contact with police through 911 systems allowed them to respond quickly to crimes. Answering the overwhelming number of calls for service, however, left police little time to prevent crimes from occurring. As increasingly sophisticated communications technology made it possible for calls to be transmitted almost instantaneously, officer had to respond to demands for assistance regardless of the urgency of the situation. Answering calls severely limited a broad police interaction with the community. The advent of the computer also contributed to the decrease in police contact with the community. Statistics, rather than the type of service provided or the service recipients, became the focus for officers and managers. As computer generated data on crime patterns and trends, counted the incidents of crimes, increased the efficiency of dispatch, and calculated the rapidity and outcome of police response, rapid response became an end in itself.[31]

This passage has the flavor of Dewey all through it. It identifies how police management did not recognize how the advances in technology had an unintended effect on how police services were provided to the public. But just as the technology brought about procedural changes, so did the adaptations to this technology affect the policies the police

[31] Community Policing Consortium, *Understanding Community Policing*, Chapter 2.

were implementing to bring about change to combat corruption and other problems. The technology allowed these changes to occur, but with unintended effects. Again, the Consortium describes this:

> Researchers have suggested that the reform era in government, which began in the early 1900's, coupled with a nationwide move towards professionalization, resulted in the separation of the police from the community. Police managers assigned officers rotating shifts and moved them frequently from one geographical location to another to eliminate corruption. Management also instituted a policy of centralized control, designed to ensure compliance with standard operating procedures and to encourage professional aura of impartiality.[32]

Note that these statements identify artifacts (communications technology), skills (rapid response) and ideas (professionalization) as causes of the disconnection of the police from its citizens and that they were intertwined in their effects. It also points out how influential artifacts can be. It is as if man must use a tool to its fullest potential once he has it in his hand. If we use a tool a small amount and make some gain, then surely using it a lot will give us even greater gains. Never mind that using is judiciously might gain us a greater advantage. It is not until we experience the unwanted results that we pull back and take review of what is occurring. Dewey warns of this: "When novelties take the form of mechanical appliances, we incline to welcome them."[33] He further points out that, "The scientific revolution of the seventeenth century was the precursor of the industrial revolution of the eighteenth and nineteenth. In consequence, man has suffered the impact of an enormously enlarged control of physical energies without any corresponding ability to control himself and his own affairs."[34] In other words, law enforcement got all these great tools to work with and did not control how they were

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[32] Community Policing Consortium, *Understanding Community Policing*, Chapter 2. This passage cites another source: *The Evolving Strategy of Policing*, George L. Kelling and Mark H. Moore, 4-5.
[33] Dewey, *The Later Works, 1925-1953*, Vol. 2: *1925-1927*, 272.
[34] Ibid., 344.

used. Whether Dewey recognized this or not, his statement regarding the overuse of artifacts can apply to skills and ideas. The overemphasis to rapid response and the overuse of the professional model in policing are examples of how skills and ideas can be part of what, "we incline to welcome." When using any of the three, police have to maintain a balanced and skeptical attitude. They should always remember that the "one best way" will have its end, too, and that constant reevaluation will give them the opportunity to make the necessary changes before they venture too far.

Although no direct references to Dewey are in any major law enforcement literature, I hope I have demonstrated that Dewey was, if not influential indirectly, he was prophetic in his discussion of the problems that law enforcement has gone through in the last 40 years. Our desire to do better is often coupled with blindness to tempering our desires to achieve a good balance. Our goal, as stated by Dewey, "is the improvement of the methods and conditions of debate, discussion and persuasion."[35] It is only through a critical eye that we can see the weaknesses of our current methods of operation and proceed to better ones.

[35] Ibid., 365.

CHAPTER III

LEARNING AS CONTINUOUS

This chapter will provide examples in law enforcement that support Dewey's ideas about learning (acquiring knowledge). The first part will identify what Dewey regards as knowledge and give examples of various types of categorizing used to claim an interpretation of an experience as knowledge. The next part will consolidate these ideas and give examples that demonstrate their interconnectivity. This chapter will also give examples of where the failure to recognize claims of knowledge as being contextual in nature, has caused problems for law enforcement.

New methods of conducting investigations, forensic techniques, prevention and enforcement are some of the examples of how law enforcement is constantly adjusting to accumulated knowledge. Dewey believed that learning is not limited to formal educational settings; everyday experiences also offered the opportunity to learn. Officers learn as they gain experience and this experience is considered valuable. All other things being equal, a seasoned officer investigating a case would be preferred to an inexperienced officer that just graduated from the police academy.

Dewey felt there was a distinction between experiences that we claim to have knowledge about and those experiences about which we claim we do not have knowledge. John J. McDermott identifies this distinction in *The Philosophy of John Dewey*, "…for in Dewey's view, 'knowing is one mode of experiencing' but not the sole

or only genuine mode."[1] For Dewey, knowledge was the use of prior experiences to categorize, or place into context, the present experience. This is not to say that we do not use prior experiences to categorize every new experience.[2] This distinction is best described by Dewey: "that to be a smell (or anything else) is one thing, to be known as smell, another; to be a 'feeling' one thing, to be *known* as a 'feeling' another."[3] We still categorize when we experience something, even if we are not claiming knowledge. At some point enough categories will exist by which to judge the new experience such that we will claim to "know" what the experience is. Sometimes this takes the form of claiming to predict future behavior. At other times, it is only a claim about what had occurred in the past, to be able to "explain" what happened. In either case, to claim knowledge is to claim that we have done a better job of categorizing, such that we have a "truer" understanding of the experience.[4]

Notice that Dewey categorizes knowledge as being "truer" rather than being the "truth." This is because Dewey feels that there is always more information to come. Once we claim absolute knowledge and stop allowing new information to be part of our reasoning process, we are no longer learning. He also feels that the categories we use transform what we consider to be knowledge. Thinking in terms of religious beliefs will yield a different picture of what is true compared to thinking in terms of science. To make matters even more complicated, we almost never use a single category to judge a thought as knowledge, nor would we want to. By using more than one category, we are

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[1] John J. McDermott ed., *The Philosophy of John Dewey* (Chicago: University of Chicago Press, 1981), 240.
[2] "There is no apprehension without some (however slight) context; no acquaintance which is not either recognition or expectation." *John Dewey, the Middle Works, 1899-1924*, John Dewey, ed. Jo Ann Boynton, Vol. 3: *1903-1906, Essays on the New Empiricism* (Carbondale: Southern Illinois University Press, 1977), 108.
[3] Ibid., 109.
[4] Ibid., 161.

forced to decide how much value we assign to one category over another. Placing value changes our definition of "true."

Dewey believed that problems start when we fail to acknowledge that there is always the possibility of more information to come and that categorizing can change what is considered knowledge. He uses an example that is very relevant to law enforcement: "'Law and order' are good things, but not when they become rigidity, and create mechanical uniformity or routine. Prejudice is the acme of the *a priori*. Of the *a priori* in this sense we may say what is always to be said of habits and institutions: They are good servants, but harsh and futile masters."[5] In other words, it is important that we are organized in our approach to solving problems, but not so much so that we are not open to new ways of solving them.

Dewey believed that learning could occur at any time; that learning is continuous. As we experience the world, we are capable of learning.[6] In other words, all learning is an extension of experiences. This is not to say that all experiences lead to knowledge, but that gaining knowledge, learning, is a type of experience.[7] Dewey further defined knowledge in two types, knowing as, and knowing of, something; as Dewey puts it, "…to be a "feeling" one thing, to be known as a "feeling" another."[8] It is this second kind of knowledge, one where we are reflective and use past knowledge to place new experiences

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[5] Ibid., 136.

[6] "An experience is a knowledge, if in its quale there is an experienced distinction and connection of two elements in the following sort: *one means or intends the presence of the other in the same fashion in which itself is already present, while the other is that which, while not present in the same fashion, must become so present if the meaning or intention of its companion or yoke-fellow is to be fulfilled through the operation it sets up*." Ibid., 115.

[7] "Or, put more positively, knowing is one mode of experiencing, and the primary philosophical demand (from the standpoint of immediatism) is to find out *what* sort of an experience knowing is-or, concretely how things are experienced when they are experienced *as* known things." Ibid., 159.

[8] "…that to be a smell (or anything else) is one thing, to be known as smell, another; to be a "feeling" one thing, to be known as a "feeling" another." Ibid., 109.

into a context that comprises the bulk of the examples in this chapter. This is not to say that, for Dewey, non-reflective knowledge in not contextual as he states, "there is no apprehension without some (however slight) context; no acquaintance which is not either recognition or expectation."[9]

Dewey also felt we are selective about what we use to judge a new experience. We select some experiences to pay attention to and use as measurements[10] while screening out other experiences we deem as not relevant. Additionally, this reflective knowledge should be understood as being relative. Any understanding is in the context of other understandings we already have.[11] As we gain more knowledge about the world, we will change what we consider to be accurate since each gain in knowledge affects the balance of the knowledge we already have. I refer to our knowledge as being balanced because of its contextual nature. How much we believe something or whether we believe one opinion over another is based upon how we bring together, or balance, the belief at hand with the other beliefs we have.

We must also understand that Dewey felt this reflective knowledge is a representation of a thing, but is not the thing itself.[12] For example, to be a murderer is one thing, to understand what murder is, another. It is important to know the difference, and we find it hard to believe that the distinction could not be made between the two. But, sometimes, these distinctions are not made. For example, an actor portrays another

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[9] Ibid., 176.
[10] "No one can take into account all the consequences of the acts he performs. It is a matter of necessity for him, as a rule, to limit his attention and foresight to matters which, as we say, are distinctively his own business." *The Later Works, 1925-1953*, Dewey, vol. 2: *1925-1927*, 268.
[11] "To be acquainted is to know what a thing is like in some particular. If one is acquainted with the smell of a flower it means that the smell is not just smell, but reminds one of some other experienced thing which stands in continuity with the smell." *John Dewey: The Middle Works, 1899-1924*, Dewey, Vol. 3: *1903-1906*, 110.
[12] "Both the thing meaning and the thing meant are elements of the same situation. Both are present, but both are not present in the same way." Ibid, 112.

person but is not that person. However, we often speak about the actor as if they were the person they portray. We must be able to identify the difference if we are to know who has the knowledge to be able to accomplish certain tasks or how those tasks should be accomplished. Imagine the surprise for an actor who has portrayed a doctor being asked to help someone in an emergency.

This misrepresentation is also applied to the law enforcement profession. Television uses its artistic license liberally when it comes to portraying how police do their job. The clichés of the Miranda warning getting in the way of an investigation and officers "bending" the rules to insure justice is done are just a couple examples of this use of artistic license. These misrepresentations affect how the public perceives what the job of policing entails. Real police work, done correctly, does not make for weekly shootouts and chases. If an officer in any current police force were to have as many shootouts or pursuits as television portrays, the officer would never get out of the office for all the paperwork he or she would be doing. Beyond that, any officer that was involved in a lot of shooting or pursuits would be under a microscope by the department and the public. The number of officers who never fire their weapons in the line of duty during their entire career far exceeds the number of officers who do.

The notion of reflective knowledge includes the ability to keep an open mind to what is being experienced. An officer raised in one culture may have a problem understanding the actions of a person from another culture.[13] In an article written by Rodney A. Ellis, Tanya D. Klepper, and Karen M. Sowers identifying differences among

[13] Stephen M. Hennessy, Cindy Hendricks, and James Hendricks, "Cultural Awareness and Communication Training: What Works and What Doesn't," *Police Chief*, 68 (2001): 15-19.

the Asian population in the United States,[14] several specific possibilities for misunderstanding were identified. One such possibility was the high value Asians give to being able to deal with problems internally.[15] Imagine the frustration an officer might have if he or she was unaware of this and was trying to obtain cooperation from an Asian who was having a problem with a family member. The Asian might not tell the officer what happened because of wanting to appear as having "strength and competence."[16] The officer could misinterpret this reluctance as the Asian trying to conceal something. Another example these authors listed (perhaps one that hits closest to home for Americans) is the emphasis by Americans on individuality and freedom of personal expression versus the traditional Asian culture's focus on "…collectivist orientation, in which the needs of the family are seen as more important than those of the individual."[17] An officer trying to encourage an Asian could make the problem worse; "…encouraging the open expression of individual emotions or opinions may intensify family conflict, exacerbating the very problems the practitioner [officer] had intended to address."[18] Further examples of how misunderstandings can occur include the fact that among multiple Asian cultures, "…there is also a broad range of diversity."[19] An officer has to keep an open mind to resolve problems where cultural differences allow for the opportunity to make a problem worse rather than fix it.

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[14] Rodney A. Ellis, Tanya D. Klepper and Karen M. Sowers, "Toward Culturally-Sensitive Practice: Working with Asians in the Juvenile Justice System," *Journal of Juvenile Justice and Detention Services*, 15 (2000): 99-114.
[15] Ibid., 102.
[16] Ibid.
[17] Ibid., 105.
[18] Ibid.
[19] Ibid., 107.

Dewey places other caveats on learning. He states that it is done *a posteriori*, not *a priori*; that all things learned are through experience.[20] This does not mean that all experiences are directly personal. We can understand something through other's experiences and plan our actions accordingly. But not having *a priori* knowledge means that even if an action in the past resulted in a certain consequence, it does not guarantee that the same consequence (even under the same circumstances) for the same action will occur again. If for no other reason, the same action (and consequence) can be understood differently, thus changing our opinion of what "really" happened. Take the example Dewey uses to describe how we can change our interpretation of an experience:

> I start and am flustered by a noise heard. Empirically, that noise *is* fearsome; it *really* is, not merely phenomenally or subjectively so. That *is what* is experienced as being. But, when I experience the noise as a *known* thing, I find it to be innocent of harm. It is the tapping of a shade against the window, owing to movements of the wind. The experience has changed; that is the thing experienced has changed-not that an unreality has given place to a reality, nor that some transcendental (unexperienced) Reality has changed, not that truth has changed, but just and only the concrete reality experienced has changed.[21]

It is not that the first experience of the window rattling is less real; we are scared by it. It is the case that we feel the second experience as "truer." As Dewey states, "The content of the latter experience cognitively regarded is doubtless truer; but it is in no sense more real."[22] We do not experience the second understanding of the window rattling as truer without having the first experience. Thus, we gain our "knowledge" of the window rattling in the context of other knowledge we have, including the experience of being scared by the rattle the first time.

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[20] "These formal conceptions arise out of the ordinary transactions; they are not imposed upon them from on high or from any external and *a priori* source." *John Dewey: The Later Works, 1925-1953*, Dewey, Vol. 12: *1938*, 106.
[21] John Dewey, *John Dewey: The Middle Works, 1899-1924*, Vol. 3: *1903-1906*, 160.
[22] Ibid., 161.

O.W. Wilson's idea that there was "one best way" to organize patrol assignments[23] is a good example of how things can become "truer." At the time, Wilson's concept provided a much improved method to deploy patrol officers. However, the failure of the users of this concept to keep an open mind led to their failure to see the inadequacies of this system and to make changes to address these shortcomings. Had they seen the need for adjustments to their beliefs, the "truth" as they saw it at that time, they might have been able to foresee the need to reach out to the community and avoid some of the confrontations that occurred in the 1960's and 1970's. It was only after the riots of this era that the shortcomings of this way of thinking became apparent and the idea of community policing was explored. The "truth" changed and community policing became the next great idea.[24]

Another idea put forth by Dewey is that learning through inquiry occurs in a social setting.[25] What we think and how we think comes from the relationships we have with others, both past and present. In other words, how we develop our forms of logic to do our thinking and judge the quality of our arguments is also based on social influences.[26] Dewey cites the history of how astronomy and evolution were affected by "institutional vested interests" as examples of how new information may not be received

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[23] O.W. Wilson and Roy C. McLaren, *Police Administration,* 3rd ed., (New York: McGraw-Hill, 1972): 363-368

[24] It is interesting to note that there are articles appearing in law enforcement profession literature criticizing community policing's lack of definition and direction. This emerging criticism however, may be overshadowed by the rise of "homeland security" as the next hot topic.

[25] "Individuals still do the thinking, desiring and proposing, but *what* they think of is the consequences of their behavior upon that of others and that of others upon themselves." *John Dewey: The Later Works, 1925-1953,* Dewey, Vol. 2: *1925-1927,* 250.

[26] "But man is *naturally* a being that lives in association with others in communities possessing language, and therefore enjoying a transmitted culture. Inquiry is a mode of activity that is socially conditioned and that has cultural consequences." *John Dewey: The Later Works, 1925-1953,* Dewey, Vol. 12: *1938,* 26.

positively.[27] An example is the reluctance by law enforcement to change attitudes about race, illustrated by the actions in the 1960's to maintain the status quo of Jim Crow laws. To demonstrate how persistent this attitude is in law enforcement, we only need to look at the recent laws enacted to curtain racial profiling.[28] It may not be the case that the majority of departments are operating this way, but there are still vestiges of prejudice that have caused these laws to be enacted.

For Dewey, part of why it is important to remember that learning occurs in a social setting is how it affects our claims of truth. That is, "Like knowledge itself, truth is an experienced relation of things, and it has no meaning outside of such relation."[29] Dewey felt that to forget this is to doom ourselves to repeat our mistakes. If we fail to acknowledge that the truth can change, we will never make changes that include new information we have acquired.

For example, at one time many police departments had height requirements.[30] These requirements varied from department to department, for a variety of reasons, none of them based on empirically studied information.[31] For the most part, the decision of where to establish the limit of how short someone could be was based upon an opinion of some member of a department, be it the chief or his delegate. It was generally believed that someone who was shorter would not have a "command presence" in a confrontation

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[27] "We have only to recall the story of astronomy and of more recent incidents in the doctrine of evolution to be aware that in the past institutional vested interests have told upon the development of physical and biological science." Ibid., 482.

[28] One example is Senate Bill 1074, passed in the 2001 Texas state legislative session. See *Texas Code of Criminal Procedure*, Chapter 2, General Duties of Officers, Articles 2.131-2.138. http://www.capitol.state.tx.us/statutes/cptoc.html

[29] John Dewey, *John Dewey: The Middle Works, 1899-1924*, Vol. 3: *1903-1906*, 118.

[30] , "For several decades, height and weight requirements remained the primary mechanism by which police departments screened applicants." "Police Physical Agility Testing: An Historical and Legal Analysis," *American Journal of Police*, Larry K. Gaines, Steve Falkenburg and Joseph A. Gambino, 12, (1993): 49.

[31] Cheryl G. Swanson and Charles D. Hale, "A Question of Height Revisited: Assaults on Police," *Journal of Police Science and Administration* 3 (1975): 183-188.

and thus, when a shorter officer went to a disturbance, there was a higher probability of it getting out of control.[32] When the height requirement was challenged, several entities conducted studies to assess the validity of the requirement.[33] The studies found virtually no validity to the height requirement and it is no longer used as a hiring criteria.

The same type of thinking kept women from being police officers. The thought process was that a woman would not be strong enough or would not be able to handle the stress of the job. Again, there was no empirical evidence to support this.[34] A few were hired in a limited capacity to jobs such as jail matrons, juvenile investigators or clerical work.[35] This has changed and studies have shown that women are capable of doing police work in an appropriate manner.[36] For many departments, the stereotyping of women as unable to perform the duties of a police officer and establishing unvalidated entry standards (such as height requirements) have fallen by the wayside.

Today, the entry requirements in many departments are built upon validated (empirical) studies that identify what skills are necessary to perform the job. In other words, the requirements used to screen applicants are based upon the skills that are

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[32] "While little empirical evidence exists to substantiate theories relating height to certain kinds of behavior…" Ibid., 183.

[33] Cheryl G. Swanson and Charles D. Hale, "A Question of Height Revisited: Assaults on Police," *Journal of Police Science and Administration* 3 (June 1975): 183-188; Research Division, Bio-Dynamics, Inc., *Study and Refinement of the Police Recruit and Selection System (Commonwealth of Massachusetts) Executive Summaries*, (Cambridge, Mass: Bio-Dynamics, 1972): 11; Terry L. Talbert, W.W. Roman, Charles I Anderson, and Richard Feehan, "Study of Police Officer Height Requirement," *Public Personnel Management* 3 (March/April 1974): 103-110; David H. Evans, "Height Weight and Physical Agility Requirements – Title 7 and Public Safety Employment," *Journal of Police Science and Administration* 8 (December 1980): 414-36.

[34] "The trial court rejected the argument that the exclusion of women was 'for their protection and the protection of the public.' In the absence of any evidence to the contrary, the court found the defendant's argument unsound and said, 'women do not need protectors…[and] there is no evidence in the record that a woman cannot perform the duties of a patrol officer.'" "Police Physical Agility Testing: An Historical and Legal Analysis," *American Journal of Police*, Gaines et. al., 50.

[35] Cynthia G. Sulton and Roi D. Townsey, *A Progress Report on Women in Policing* (Washington D.C: Police Foundation, 1981), 61-100; Lucy Acerra, "From Matron to Commanding Officer – Women's Changing Role In Law Enforcement," in *Law Enforcement Bible*, ed. Robert A. Scanlon, 131-140 (Hackensack, New Jersey: Stoeger Publishing Co. 1978).

[36] Sulton, *A Progress Report on Women in Policing,* 13-16.

identified to perform the regular duties of an officer. Many departments still have physical fitness requirements, but only those that have based these requirements on validated studies have withstood court scrutiny.

A broader example of how a social setting affects the truth is cited in chapter II. The example is the changing attitude about the ability of the police to reduce the crime rate is an example of how a social setting affects the truth. Where once it was believed that the police could do little to affect the crime rate overall,[37] the change that occurred within the New York Police Department demonstrated that this was incorrect. The "social setting" was the attitude of the police (along with the political entities above them) accepting the statement of not being able to directly affect the crime rate. They were able to reduce the crime rate tremendously, but only after rejecting this idea and identifying what it would take to accomplish this.[38]

The main point of these examples is that the "truth" changed when better (often validated) information became available. Before the studies were done regarding height requirements, the belief was based upon non-scientific opinion. Legislation was required to eliminate restrictions for women in policing. Subsequent studies showed that women are capable of performing regular police duties just as well as men. As for the New York Police Department example, the proof or validation of the new "truth" came after the fact. It was not until *after* they tried the new method that they could claim that it worked.

[37] Henry, *The Compstat Paradigm*, 6.
[38] Ibid., 227-228.

One other claim that Dewey made about learning, was that sheer effort alone did not cause learning to occur.[39] The idea that learning was hard work failed to recognize the need for a balanced approach, one in which mundane topics are addressed, yet allowed for the spontaneity of discovery. In Dewey's words the, "matters simply because they have to be attended to,"[40] and "the spontaneous power of the child,"[41] must be addressed if we are to release the full potential of a child. The problem with using sheer effort as the model for learning is that the child will learn to divide his or her attention to deal with the task while "getting his mental imagery free to work upon matters of real interest to him."[42] The problem with making everything interesting is "the spoiled child who does only what he wants,"[43] is the result. Dewey believed that by having a balanced approach, we give the child a chance to deal with the necessary things to cope with day to day life (like knowing our mathematical tables to be able to balance a checkbook), while keeping the ability to look at something with a spontaneous eye to search for better solutions to our problems. Were it not for our spontaneous abilities, new ideas would never become a reality. We may be steeped in a history of lessons, but it is our ability to look at these lessons in a new way that makes improvements possible.

Dewey also states that learning is not strictly a mental process. There is a physical side to learning and the mental and physical aspects are not separate.[44] What follows from this is the different teaching methods are better for different subjects. For example, a football lineman coach teaching players how to block will use a combination of

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[39] "While the theory of effort is always holding up to us a strong, vigorous character as the outcome of its method of education, practically we do not get this character." *John Dewey, The Early Works*, John Dewey, ed. Jo Ann Boydston, Vol. 5: *1885-1898* (Carbondale: Southern Illinois University Press, 1972), 115.
[40] Ibid., 116.
[41] Ibid., 119.
[42] John Dewey, *John Dewey: The Early Works, 1882-1898*, Vol. 5: *1885-1898*, 119.
[43] Ibid., 116.
[44] *See* "My Pedagogical Creed," Ibid., 84-95.

explaining what needs to be done, a physical demonstration and requiring the player to repeatedly perform blocking moves. In the early stages the coach might be calm, reflecting on what the purpose of a particular block might be. Once the training moves to the repeated performance of blocking, coaches often employ a more authoritarian method, shouting and badgering the player in an effort to raise adrenaline levels so the player will perform better. Another example would be a child trying to learn multiplication tables while seated in a cold classroom. The child will be more interested in staying warm rather than learning the subject.

Dewey felt these various ideas on learning were interconnected. Many of the examples could be used for more that one of these facets of learning. For example, to understand the meaning of "truth" is to understand that it is continuously changing. It is affected by the setting in which it occurs and when we think of something, we do so in a representational manner. Recognizing the interconnectivity of Dewey's ideas on learning gives us the opportunity to condense them. I believe we can collect Dewey's ideas into three main themes:

1. *Learning is continuous* – as new information becomes available, new "truths" are discovered. We should adjust our actions based upon this new information with the understanding that our information is the best we have at the time but there is always the possibility that our most recent "truth" could change.
2. *Learning occurs a posteriori* – before we can consider something "knowledge" we have to measure it in the context of what we already

know. Our past experiences give us this context, that is, something to measure against, and without them we cannot have new knowledge.

3. *Learning does not occur in a vacuum*[45] – how we learn and what we learn are affected by variables such as who we are, what we have learned previously and the environment in which we learn. This also entails recognizing the physical aspects to learning.

Learning is continuous is demonstrated in several ways by law enforcement. Police recruits start by attending a basic academy. This usually covers a variety of topics, some including physical skill such as defensive tactics and others using mental skills, such as understanding the various crimes in the penal code. Once out of the academy, the recruit goes through a field training process, where an experienced training officer demonstrates how to apply these skills. The second phase of training usually terminates in some sort of "ghost" phase, where the training officer acts only as an observer, making a judgment on whether the recruit has developed sufficiently to be able to function on his or her own. Once the recruit passes this phase, he or she is promoted to a probationary officer. [46] It is usually understood that the new officer has been trained to perform the duties minimally and that the training will not stop just because the formal training period has passed. During the probationary period, the new officer's supervisor takes over the training, albeit at a much less intimate level. The new officer continues to receive training, perhaps by more methods that he or she is not even aware of. For an average

[45] Dewey uses a similar statement when talking about ethics. *John Dewey: The Later Works*, John Dewey, ed. Jo Ann Boydston, Vol. 7, *Ethics* (Carbondale: Southern Illinois University Press, 1985), 178.
[46] The author is describing a training model called the "San Diego" Model. A more recently developed model is the "Reno" model. Although the methods used in these two models are different, they still go through the steps of having the recruit attend an academy, go through field training and have a testing phase to insure the recruit has developed enough to perform on his or her own.

investigation of a crime, the supervisor usually does training after the fact. A new officer will write a report and the supervisor will check it for quality and make suggestions for improvement. The new officer can also receive training from other officers that may be present at calls they attend. The seasoned officer can fill in the blanks that are invariable present due to the limited time allotted for the initial training period. Each contact with a citizen, whether the citizen is a criminal, victim or witness, can lead to further learning. This learning can go on for the entire career of an officer.

Notice that I have used the words “can” to describe the possibility of the new officer learning. This is because in the beginning, the responsibility for an officer’s learning lies with the department to provide the opportunities for learning. This responsibility shifts to the officer as he or she is allowed to begin working on their own. This is not to say that a new officer does not have any responsibilities at the beginning of training or that the department does not have any responsibility to provide learning opportunities for experienced officers. It is the case that without the new officer’s cooperation, learning will not occur. It is also the case that the responsibility is shifted, although not totally, from department to officer to coincide with the ability to demonstrate learning without close guidance. Perhaps the comment I once heard questioning the quality of the experience level of an officer says it best: “The question is does he [the officer] have several years of experience or one year of experience repeated several times.” No matter how well a department provides the opportunity for an officer to learn, it is up to the officer to take advantage of that opportunity.

Whether a new officer is in a controlled environment (academy), in a limited controlled environment (with a training officer), or in a possibly unlimited environment

(when working on independently), the opportunity to be conscious of what is happening and to learn from these various environments remains present. It is up to the new officer to remain open to the possibilities, and to select just what kind of learning he or she wishes to obtain.

An officer can be compared to the child in Dewey's example of a balanced approach to provide the possibility for learning. The successful prosecution of criminals requires an officer to understand the routine information in the written laws, along with being able to put that information into a certain form. An officer wants to put criminals away. It does an officer no good to catch a criminal committing a crime if there is no knowledge about what crime to charge a criminal with or to know what types of proof are required to do so. The ability to learn from new experiences is also necessary. Without the continuous ability to learn, new techniques for solving crimes are never discovered.

The use of DNA to identify the suspect in a crime was the result of taking techniques used for biological study and applying them in a forensic setting.[47] Perhaps the best example is the continuing improvements occurring in the areas of fingerprinting.[48] The discovery of the forensic utility of fingerprints, the development of a classification system, and the numerous methods of lifting techniques, illustrate a long history of improvements in fingerprint technology. Even the computer has brought about change. Rather than having to manually search card after card of fingerprints of known criminals against a latent print, a computer can accomplish this task. Fingerprint comparisons that once took months to complete now only takes minutes.

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[47] Jay Siegel, "Murder, Rape , and DNA," *Journal of Criminal Justice and Popular Culture* 2 (1994): 1-4. http://www.albany.edu/scj/jcjpc/vol2is1/murder.

[48] Gary Gulick, "Evolution of Fingerprint Techniques," *Evidence Technology Magazine*, 1 (July/March 2003): 12-15. http://www.evidencemagazine.com/issues/julyAug03/fingerprint.

The concept that learning occurs *a posteriori* has a strong advocate in law enforcement and even the courts are supportive of this train of thought. One example is the case reviewed in 1968 by the U.S. Supreme Court, Terry versus Ohio.[49] The case revolved around a pat-down search (frisk) conducted by a veteran officer (McFadden). McFadden spotted three persons acting suspiciously and based upon his experience (39 years as an officer), recognized the actions of the suspects as that of persons who were about to commit a crime. He patted the persons down and found weapons on two of them. The three were arrested and when their case came to court, they challenged the arrest, stating McFadden did not have probable cause. The case was appealed all the way to the Supreme Court and the conviction was affirmed. McFadden's 39 years of experience was one of the deciding factors in the affirmation of the conviction. The Court established a middle ground, between a hunch and probable cause, they termed "reasonable suspicion." This case is the benchmark for when a frisk can be conducted.

The prior example does not demonstrate that learning occurs *a posteriori*, only that there is strong support for this type of thinking. A more direct example is O. W. Wilson's patrol allocation previously cited in this chapter and in chapter II. The migration of the professional model to the community policing model was a direct result of the police learning through trial and error that there were shortcomings in the professional model. Law enforcement had to "learn" that there were consequences to losing contact with the public. This example continues with the shortcomings law enforcement is finding with community policing.[50] It is not that either the professional or community policing models are wrong *per se*. It is that law enforcement has often failed to see the

[49] *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. (1968).
[50] Chapter V will deal more fully with this point.

need for a diversified approach to its problems. Both models have actions that provide for the public's wants and needs. Knowing when to apply the appropriate model is the mark of a good department.

Law enforcement also provides good examples that *learning does not occur in a vacuum*. One part of this is the idea that learning occurs in a social setting. One of the problems that can occur with the training of new recruits is a difference in what is taught at the academy and what is learned from the field training officer. If a department has not established proper guidelines for the training officer there can be a great discrepancy. The training officer has a large influence on a recruit because the training officer will be one of the judges deciding whether the recruit successfully completes the initial field training. This means that the recruit can be influenced to perform in ways that do not follow the procedures set by the department. Barring other influences, the recruit is left to choose which lessons to use in the performance of his or her duties. If the recruit uses only the lessons taught in the academy, he must establish practical applications on his own. If the recruit uses the lessons taught by an errant training officer, then the recruit is not performing the job as expected by the governing body. On the other hand, if the department is conscientious about insuring the quality of what the training officer teaches, this problem is lessened considerably.

The O. W. Wilson's patrol deployment model can again serve as an example. The change from the professional style was due to the reaction by the public. The lack of contact created a divide and public pressure demanded a change in prioritizing police activities from that of answering calls efficiently to that of addressing neighborhood concerns.

Dewey's ideas on learning identify the conditions that affect how and what we learn. This chapter has demonstrated how these conditions apply in the law enforcement environment. It has also demonstrated how these conditions are intermingled. The Wilson patrol allocation example is one that is particularly poignant. The three summarizing themes previously stated are all demonstrated. The general migration of law enforcement from the professional model to the community policing model to the emerging criticism of the community policing model demonstrates that learning is continuous. It also demonstrates that learning occurs *a posteriori*. Lastly, it demonstrates that it does not occur in a vacuum. The constant interconnectivity Dewey identifies is very prevalent in law enforcement, thus making his ideas something those in this profession should be studying.

CHAPTER IV

DEWEY'S ETHICS AND THE ROLE OF DISCRETION IN LAW ENFORCEMENT

This chapter will deal with Dewey's ideas on ethics and how they apply to the use of discretion in law enforcement. The previous two chapters demonstrated Dewey's multifaceted approach to learning and how technology affects us. Dewey's ideas on ethics also follow a multifaceted approach, albeit a dissimilar one. In his approach to ethics, the various facets seem to have bilateral natures. For example, he states, "The intellectual distinction between customary and reflective morality is clearly marked. The former places the standard and rules of conduct in ancestral habit; the latter appeals to conscience, reason, or to some principle which includes thought."[1] In other words, one form of morality is based on custom and the other is based on reasoning. He recognizes the "distinction is relative rather than absolute."[2] Dewey sees us operating somewhere in between these two extremes, or better said, using a combination of the two rather that using just one or the other.

Further, Dewey states, "No fundamental difference exists between systematic moral theory-the general theme of this Second Part of our study-and the reflection an individual engages in when he attempts to find general principles which shall direct and justify his conduct."[3] In either situation, we are reaching for the same goal of trying to

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[1] John Dewey, *John Dewey: The Later Works*, ed. Jo Ann Boydston, Vol. 7, *Ethics* (Carbondale: Southern Illinois University Press, 1985), 162.
[2] Ibid.
[3] Ibid., 163.

find out what is the "right" or "moral" thing to do. Dewey further explains that systematic moral theory has some roots in reflective morality. In his words, "Some degree of reflective thought must have entered occasionally into systems which in the main were founded on social wont and use."[4] Stated differently, at some point in time customary morality used reflection to decide what was right. One could infer that Dewey does not have a problem with customary morality. Quite to the contrary, Dewey states, "Moral theory cannot emerge when there is positive belief as to what is right and what is wrong, for there is no occasion for reflection."[5] Even if the original reason for a customary moral rule is based upon reflection, Dewey acknowledges that each new situation brings new issues that must be considered before a decision can be made as to what is "right." Just because a certain decision was "right" at one time does not make it right some time later unless one has taken into account the new variables.

A second bilateral distinction Dewey identifies is the balance between Utilitarian thought, the idea that consequences (what we do, ends) is the most important issue, and Kantian thought, the idea that intent (how we do, means) is the most important issue. As he states:

> Our analysis shows that both views [Utilitarian and Kantian] are one-sided. At whichever end we begin we find ourselves intellectually compelled to consider the other end. We are not dealing with two different things but with two poles of the same thing.[6]

Dewey disagrees with those who state there is a dichotomy between Kantian and Utilitarian theories. Indeed, he feels they are highly dependent upon each other to establish a complete set of ethics. To use only one side or the other is to fail to take into

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[4] Ibid., 162.
[5] Ibid., 164.
[6] Ibid., 173 [Bracketed entry mine].

account all the relevant variables. One example he uses is the result of an operation in which a patient dies.[7] The surgeon did not intend for the patient to die. Indeed, the patient would have most certainly died if the surgeon did not operate. If circumstances beyond the surgeon's control caused the death of the patient, we would say the surgeon's actions were good, even if the consequences were not. Another distinction Dewey makes in this example is the difference between intent and motive. The surgeon's intent was good (he wanted to save the patient), but his motive is not usually judged. Dewey identified some of these motives: a kindly feeling, a desire for professional standing, to demonstrate a skill, or to gain a fee.[8] Dewey points out that Utilitarians would not judge the surgeon's actions as wrong, even though the results were not good. He notes that Utilitarians are selective in what consequences they use to judge a person's actions; that they can only use *foreseen* consequences.[9] Being selective about what type of consequences to use to judge a particular act also means the act is judged in a certain context. Once we do not use all the consequences or if we do not use all the intents, then we are placing the act in a certain context.

Dewey feels there is good reason for using both Utilitarian and Kantian reasoning. For Utilitarian reasoning, "The value of the Utilitarian position consists in the fact that it warns us against overlooking the essential place of the intellectual factor, namely, foresight of consequences."[10] For Kantian reasoning, "The idea that consequences are morally relevant is true only in the sense that any act is always likely to have some consequences which could not have been foreseen, even with the best will in the

[7] Ibid., 173-174.
[8] Ibid., 174.
[9] Ibid., 173.
[10] Ibid., 175.

world."[11] In other words, we can never be totally sure what will result from our actions, so sometimes they must be judged by their intent. For Dewey, the balance between Utilitarian and Kantian reasoning is necessary if we want to have the best chance for the right results for the right reason.

The bilateral use of Kantian and Utilitarian reasoning has examples in law enforcement. We want our police to obtain a certain Utilitarian result (reduce crime, stop criminal activity), but we want them to do so in a certain Kantian manner (follow the laws). Indeed, the very reason police have policies and procedures, and laws are enacted covering police conduct, is to control the behavior of the police. At the same time, these laws are written in such a manner that the intent is to allow the police to perform their mission of protecting the public. The fact that laws are changed by legislators of the various levels of government is an example of how our world is constantly changing and these laws are in need of adjustment. Policy also changes within police departments, even if at a much slower rate than it should.[12]

Related to the Utilitarian/Kantian form is a third form of the bilateral nature of Dewey's ethics. It is the two types of conflicts that can arise when one is trying to decide what to do. One is the conflict which takes place, "when an individual is tempted to do something which he is convinced is wrong."[13] The second is where "The struggle is not between a good…and…wrong. It is between values each of which is an undoubted good in its place but which now get in each other's way."[14] Knowing which of these struggles

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[11] Ibid., 175-176.
[12] See "The Public and Its Problems" in *John Dewey: The Later Works, 1925-1953*, ed. Jo Ann Boydston, vol. 2: *1925-1927* (Carbondale: Southern Illinois University Press, 1984): 235-372, for a more thorough discussion on how government entities are slow to change.
[13] Dewey, *John Dewey: The Later Works*, Vol. 7, *Ethics*, 164.
[14] Ibid., 165.

someone is going through when making a decision can be helpful. Someone trying to decide between two rights (right/right) has a lot more leeway in deciding what to do than someone who is trying to decide between right and wrong (right/wrong). For example, an officer who is working on preventing burglaries in a particular area might decide to visit with the people living in the area and tell them how to secure their property to reduce their risk. On the other hand, the officer might think that saturating the area with officers could work. The officer might even decide to use a combination of strategies. Each of these solutions would offer its own advantages and disadvantages. An officer who is trying to decide whether an action is right or wrong, such as whether or not to take a bribe, must decide to do the right thing if he is to remain true to his profession. Additionally, he must have a clear understanding of what is considered the right thing.

The previous example of a right/right situation does not address this problem fully. The options the officer had were not in conflict. They had the same objective, that being to stop burglary in the area. An article by John Klenig about "noble cause corruption" gives a better explanation of the conflicts that occur in right/right situations.[15] "Noble cause corruption" occurs when "it is impossible to realize all our highest goods or most strongly felt duties. In a law enforcement context, it is raised when it is impossible to satisfy the rights of both innocent victims and suspects."[16] Klenig identifies several definitions of noble cause corruption,[17] including testimonial deception and violation of civil rights in the field to forward some end. Examples of the first variation are fabrication of material evidence, false claims as to how evidence was obtained, and

[15] John Klenig, "Rethinking Noble Cause Corruption," *International Journal of Police Science and Management* 4 (Winter 2002): 287-314.
[16] Ibid., 290.
[17] Ibid.

selective presentation of evidence. Examples of the second variation are excessive use of force, illegal surveillance tactics and racial profiling. Klenig identifies these conflicts as being ones between means (Kantian) and ends (Utilitarian).[18] The means are compromised if the officer lies when testifying to gain a conviction, or tortures a prisoner to find out where to find a kidnapped victim. Both of these corruptions are trying to achieve the good ends of conviction of a guilty person and rescuing a kidnapped victim. This conflicts with the good ends of honest testimony and observation of civil rights.

The solution lies in our ability to instill officers with a strong desire for the truth. Klenig points out that even small breaches of the truth can lead to "noble cause corruption of the kind that has proved so troubling in policing."[19] By stressing and reinforcing truth seeking behavior, the chance that an officer will resort to "white lies" will be lessened.

Dewey identifies habits as part of the methods of applying moral reasoning. His description of habits is bifurcated rather than bilateral. He points out that habits can have the potential to affect our activities in both positive and negative ways:

> In the organization of stable character the morality of custom is strong on one side. The group trains its members to act in the ways it approves and afterwards holds them by all the agencies in its power. It forms habits and enforces them. Its weakness is that the element of habit is so large, that of freedom so small. It holds up the average man; it holds back the man who might forge ahead. It is an anchor, and a drag.[20]

If our habit is to continue to use our past policy without reflecting on its value as a good moral guide in any particular situation, it can be the cause of untimely calls for change.

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[18] Ibid., 292-295.
[19] Ibid., 300.
[20] Dewey, *John Dewey: The Later Works*, Vol. 7, *Ethics*, 65.

Very often, it may take an extraordinary situation to bring a particular policy into the light of scrutiny.

For example, it has been demonstrated that officers will use the techniques they were taught when in shooting situations. The shooting of two California Highway Patrol (CHP) officers in 1970 is one such example. The two CHP officers spotted a car thought to have been used in an armed incident. They stopped the vehicle in a parking lot and a gun battle ensued. The two CHP officers were killed. Two other CHP officers came upon the scene and began taking fire from the suspects.

What was peculiar about this incident was the description of how one of the officers was killed by one of the suspects. Witnesses saw that the second pair of officers had taken cover behind their vehicle. After exchanging several shots, one of the officers paused to reload.[21] The suspect saw this and ran up to the officer. The officer continued to reload and when the suspect got within a few feet of the officer, he shot the officer. The officer could have stopped reloading and fired at the suspect any time during the suspect's approach. The officer's revolver did not need to be fully loaded to function and he had a clear shot from cover while the suspect was approaching over open ground.

The investigators for this case wondered why the officer had not at least tried to use his weapon partially loaded and reviewed the training procedures for CHP. They found that the procedures for training and re-qualifying focused strictly on form (proper stance) and scores, making no attempt to apply realistic scenarios. The officer, in other words, was doing what he was trained to do (his habit). In particular, this "habit" had been reinforced strongly because of the CHP's requirement to re-qualify often and the

[21] The officer was using a revolver. At that time the CHP used belt loops to carry extra ammunition. This is a leather strip in which each bullet is mounted individually in a loop attached to the strip. It requires the officer to pull each bullet out of its loop one at a time and load it into the revolver.

officer was so habituated to fully reloading before firing again that he failed to realize that this was not what he needed to do. Moving so the suspect could not get a clear shot or closing the revolver and shooting back would have been more appropriate actions.

Since that time firearms training in law enforcement has changed dramatically. The changes have not been limited to preventing tactical mistakes like the ones the CHP officer made, but now also include "shoot, don't shoot" scenarios to prevent unjustified shootings.

Habituation also occurs in how we think. Very often, we use past methods to find solutions to current problems. This usually works, but sometimes a problem calls for a very different approach. For example, the practice of many police departments to treat domestic assault differently than a stranger assault was more a matter of past practice than studied action. Police were less likely to arrest for assault when victims were closer in relationship to the suspect.[22] The police looked for solutions by recommending counseling or some other non-arrest solution. In Texas, police action was further inhibited by the fact that if the assault was of a misdemeanor nature, the law prohibited arrest without a warrant unless the assault occurred in the officer's presence or there was a continuing threat of violence.[23] This practice was not challenged until it was evaluated. The challenge led to the state legislature enacting family violence laws that provided the opportunity for an arrest based upon probable cause even if an officer did not view the offense.[24]

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[22] Charles W. Thomas and W. Anthony Fitch, "The Exercise of Discretionary Decision-Making by the Police" *North Dakota Law Review* 54 (1977): 83.
[23] *Texas Code of Criminal Procedure*, Chapter 14, Arrest Without Warrant, Article 14.03 (2). http://www.capitol.state.tx.us/statutes/cptoc.html.
[24] In 1997, the Texas State Legislature added a definition of family violence to the Family Code and delineated in the Code of Criminal Procedure when an officer could arrest without a warrant for an offense

Dewey's caution about habits also states they can be positive. They serve the purpose of providing an organized platform from which an officer can operate when he does not have the opportunity or capability to reason through a perplexing problem. The key is to establish habits that reinforce the proper actions. Habits can reinforce a "good" action, but do not taking the place of reasoning about that action. This point is exemplified in his explanation of why moral theory is useful. He states that:

> Moral theory can (i) generalize the types of moral conflicts which arise, thus enabling a perplexed and doubtful individual to clarify his own particular problem by placing it is a larger context; it can (ii) state the leading ways in which such problems have been intellectually dealt with by those who have thought upon such matters; it can (iii) render personal reflection more systematic and enlightened, suggesting alternatives that might otherwise be overlooked, and stimulating greater consistency in judgment. But it does not offer a table of commandments in a catechism in which answers are as definite as are the questions which are asked. It can render personal choice more intelligent, but it cannot take the place of personal decision, which must be made in every case of moral perplexity.[25]

For Dewey, life is too varied and complex to believe that a set of rules can be established to tell us how to act in *every* case.[26] Even the best set of morals must allow for exceptions. Otherwise, we are giving up our ability to make a reflective choice. As Dewey states, "the attempt to set up ready-made conclusions contradicts the very nature of reflective morality."[27] Dewey does not want us to be without some manner in which to derive a set of morals. He believes we would be better served by finding a method in which we can judge the quality of our morals and make changes as we gain more

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that occurred in defined situations. See *Texas Code of Criminal Procedure* Chapter 5, Arrest Without Warrant, Article 14.03 and *Texas Family Code*, Title 4, Protective Orders and Family Violence.

[25] Dewey, *John Dewey: The Later Works*, Vol. 7, *Ethics*, 166.

[26] "Any belief as such is tentative, hypothetical; it is not just to be acted upon but is to be *framed* with reference to its office as a guide to action. Consequently, it should be the last thing in the world to be picked up casually and then clung to rigidly." *John Dewey: The Later Works, 1925-1953*, ed. Jo Ann Boydston, Vol. 4: *1929*, *The Quest for Certainty* (Carbondale: Southern Illinois University Press, 1984), 221.

[27] Dewey, *John Dewey: The Later Works*, Vol. 7, *Ethics*, 166.

information. As he states, “Morals is not a catalog of acts nor a set of rules to be applied like drugstore prescriptions or cookbook recipes. The need in morals is for specific methods of inquiry and contrivance.”[28] Dewey is worried that the focus will be on finding general principles of morals rather than finding methods to critically judge these principles. Critical inquiry allows for the discovery of new perspectives to old problems.

On the other hand, some habituation can be a good thing. An officer that establishes a habit of maintaining a courteous demeanor when confronted with an agitated motorist reduces the distance between the police and the public. This habit becomes a hindrance when the officer makes a traffic stop on an armed robbery suspect. It is safer for all involved if the officer does not use any courtesy and controls the suspect by direct commands.

Another aspect of moral reasoning that Dewey recognizes is the relationship between conduct and character. He states, “conduct and character are strictly correlative.”[29] Our character is the general disposition to act in a certain manner. We cannot predict what the consequences of any particular act may be with certainty. We can identify patterns that tend to lead to a certain desired result. Reflecting upon these patterns and using them to form our actions, we establish a better potential for desired results. This potential is key for Dewey. He states, “Every act has *potential* moral significance, because it is, through its consequences, part of a larger whole of behavior.”[30] An act that on its face has no moral significance, can later be discovered to have a large moral consequence. Dewey’s example of this is one where a person wants to

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[28] John Dewey, *John Dewey: The Middle Works*, ed. Jo Ann Boydston, Vol. 12, *1920, Reconstruction in Philosophy and Essays* (Carbondale: Southern Illinois University Press, 1982), 177.
[29] Dewey, *John Dewey: The Later Works,* Vol. 7, *Ethics*, 172.
[30] Ibid., 169.

open a window because he feels the need for air.[31] The act alone seems to have no moral significance. Placed in the context that the person's associate is an invalid sensitive to drafts, the issue of opening the window takes on a different value. Now the person no longer has a simple decision of opening the window for his own comfort. The consequences of the act now take on a moral context.

The ability and willingness to reflect upon an action creates an opportunity for a decision to be moral. Dewey states, "There is no better evidence of a well formed moral character than knowledge of when to raise the moral issue and when not."[32] In the previous example, recognition of the potential of the act to have a moral consequence made for a "well formed" character. The person recognized that people need to have balance (another bilateral relationship) between being "so callous or so careless they do not raise the moral issue often enough." and those that are "so unbalanced that they hamper and paralyze conduct by indulging in what approaches a mania of doubt."[33]

It is likely we could miss an opportunity to act in a moral manner if we are not in the habit of reflecting upon our activities. For Dewey, "The person who reflects on his past action in order to get light on his future behavior is a conscientious person."[34] If we are in the habit of reflecting upon a situation to identify its moral potential rather than using a certain moral imperative, we will know when we need to apply moral reasoning and when not to. If we are in the habit of using a moral imperative without moral reflection in all cases, then our opportunity to find a better way to behave will disappear.

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[31] Ibid.
[32] Ibid., 170.
[33] Ibid.
[34] Ibid.

Dewey recognized we could not pause to reason through every action we take. That is why character is important. Being trained to act in a moral manner as a matter of habit creates a better chance of our actions being so when we do not have time to reflect. For example, there are times police have an opportunity to reflect upon the use of force. In a hostage situation, there is often time to identify the circumstances in which police snipers should shoot the suspect. On the other hand, a patrol officer inadvertently walking into an armed robbery of a convenience store spends very little time reflecting on what is the best action to take. To not use the opportunity to reflect upon the use of deadly force in the hostage situation is to act negligently. To spend a considerable amount of time reflecting upon whether to use deadly force in a robbery situation could result in the injury of the officer or other innocent persons.

A personal example of Dewey's idea that morality can be contextual is a past internal affairs complaint in which I was directed to make a recommendation. The complaint was against an officer who had failed to properly investigate a hit and run accident that had been reported. The officer had met the victim at the hospital without going to the accident scene and failed to follow-up in the correct manner. Initially, the officer thought that the complainant was lying. There were few injuries and the complainant had stated he had been hit by a car while riding a bicycle. During the interview, the complainant handed a card to the officer with the information regarding the car written on it. Wondering how the complainant had managed to have a card and then had the wherewithal to write the license number down after being hit, the officer suspected the complainant was just trying to pull an insurance scam.

The officer had not used the techniques most officers would use during the follow-up even though he had taken several measures that were extraordinary (but unproductive). The officer stated to the internal affairs (IA) investigator that he did not know about how to use the computer aided dispatch (CAD) that would have allowed him to see the notes the dispatcher had entered. If officer had looked there, he would have found a witness' name that would have been able to clear the case quickly.

The other supervisors felt that the officer had not been trained adequately in the area of using the computer. They based their recommendations on the officer relating to them that he had not received this training. They focused on the statement made by the IA investigator that the officer had taken extraordinary measures, albeit unusual ones. They also acknowledged that the officer should have asked for guidance from a supervisor before closing out the report. The supervisors did not find this information as enough to prove that the officer had failed to adequately conduct an investigation. They knew about the complainant's troubled history and worked daily with the officer who received the complaint (he had an outstanding record).

I did feel the lack of going to a supervisor was important. If the officer had done so, he would have been advised to look at the CAD notes to make sure there was not any more information to use in the investigation. I also knew the complainant had been a problem in the past.

I recommended the complaint be sustained while the other two supervisors had recommended it be not-sustained.[35] If we were all using the same information, how could that be? The Chief had noticed the different recommendations and brought us all in to

[35] In my department, a sustained recommendation means there was enough evidence to show the complaint was valid. An exonerated recommendation means there was enough evidence to show the complaint was not valid. A not-sustained means there was not enough evidence to show the complaint either way.

discuss it. He agreed with my recommendation but not without questioning the reason the other supervisors had not seen the case the same way I had. Right after that I had a discussion with the IA investigator and had an epiphany: I was using Dewey's contextual reasoning to make my decision and to judge the decision of some of the other supervisors. I noted that the other supervisors were also using contextual reasoning but came up with the different recommendations.

In *The Postulate of Immediate Empiricism* Dewey states, "The content of the latter experience cognitively regarded is doubtless *truer* that the content of the earlier; but it is in no sense more real."[36] Dewey used this statement to describe the difference between how a noise was interpreted by him when he first heard the noise and it scared him and later, when he realized it was just a shade tapping a window from the wind moving the shade. He describes both of these as real but one was "truer." In the case of the investigation I was judging, I felt my recommendation was truer than that of the other supervisors. We were both judging the actions taken by the officer, but their focus was on the training and mine was on the failure to ask for help. I judged the lack of training as a valid point but it was overcome by the officer not asking a supervisor for help. The other supervisors recognized that the failure to ask for help was valid but they felt the lack of training was the pivotal point.

We all used the same facts to make our decisions, just as Dewey was judging the same noise at one time to be a threat and the second time to be the results of wind. The difference was the *experience* each of us had to draw from. I had been an IA investigator at one time and I had heard this type of excuse before. I also had the point of view of having to be accountable for my recommendation if we were scrutinized by an outside

[36] John Dewey, *John Dewey: The Middle Works, 1899-1924*, Vol. 3: *1903-1906*, 161.

source. The other supervisors had the point of view of whether or not they were going to recommend a good officer be subjected to discipline for a complaint by a citizen that was difficult on a regular basis. We all used the same information to make our judgment. Nonetheless, one recommendation was judged "truer" than the other. This example demonstrates the contextual nature of morality. I acknowledged the validity of the argument offered by the other supervisors, but felt I had a point of view that was truer.

Although this example does not demonstrate a direct use of discretion, it does give a hint as to how a discretionary decision can have a detrimental effect on the services provide to the public. Officers have the opportunity to use discretion in just about every aspect of their job. In fact, it is almost a necessity, since there is great variability in the many situations they encounter. This is demonstrated in an article by Charles W. Thomas and W. Anthony Fitch in the *North Dakota Law Review* titled, "The Exercise of Discretionary Decision-Making by the Police."[37] Their focus was limited to arrest decisions but the reasoning could be applied to the use of discretion in other situations. Thomas and Fitch state it is necessary for the police to use discretion for several reasons,[38] while their critics state that this is not the case, that "legislative mandates, judicial review, and professional standards" preclude the use of discretion.[39]

First, the authors recognize "that full enforcement of criminal codes in a democratic society is a dubious goal even of it were practiced within a structure of enforcement which provided for the requisite level of respect and attentiveness to

[37] Charles W. Thomas and W. Anthony Fitch, "The Exercise of Discretionary Decision-Making by the Police" *North Dakota Law Review* 54 (1977): 61-95.
[38] Ibid., 62-66.
[39] Ibid., 62.

constitutionally guaranteed liberties."[40] Further, this would "be detrimental to the goal of just enforcement."[41] They note that to have the manpower to enforce every law every time it was violated would require an unreasonable boost in manpower for the police. Along those same lines, if police were to arrest everyone that violated the law, the courts would be so clogged they would cease to be effective.

Second, the courts have recognized the role of discretion through various court pronouncements. Court decisions also have a practical problem in that these decisions have to be interpreted by the officers. This leaves the window open for interpretation, another way of saying the police have the discretion to decide what was intended by the courts.

Third, although the code of ethics for police states that it will not use discretion, in reality this is not what is practiced. The Code states that an officer shall enforce the law, "With no compromise for crime and with relentless prosecution of criminals."[42] Many an officer has decided to not file charges due to extenuating circumstances; so much for "no compromise" or "relentless prosecution."

Thomas and Fitch identify several characteristics used by police to make an arrest decision, those being the characteristics of the suspect (race, age, sex, socioeconomic status, and demeanor; a non-exhaustive list),[43] the characteristics of the victim,[44] aspects of the situational context,[45] and department policies.[46] Their findings were that the police use these factors in ways that do have an unbalanced impact. They qualified their

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[40] Ibid., 63.
[41] Ibid.
[42] Ibid., 66.
[43] Ibid., 73-81.
[44] Ibid., 81-83.
[45] Ibid., 83-85.
[46] Ibid., 85-88.

conclusion however, by stating "that the manner in which these types of variables influence police decision-making is not nearly so simplistic as many have previously assumed."[47] In short, the police were not as unreasonable in the use of discretion as expected, given the lack of guidance in how to apply discretion. They go on to say the problem is not that the police can use discretion in an arrest situation. It is the case that there is no uniform method to apply when and how discretion can be used.[48] Their conclusion was that the courts and legislatures were ill equipped to develop the guidelines to oversee the use of discretion.[49] Their suggestion was that the police themselves would be the best source "for the specification of rules which might govern the exercise of discretion."[50]

Thomas and Fitch wrote this article in 1977 yet their argument is still relevant. One thing that has changed since then has been the advent of a national accreditation commission (CALEA).[51] Relevant to the discussion on use of discretion, CALEA has established standards that speak to the issues addressed in Thomas and Fitch's article. Even the standards set up by CALEA do not guarantee officers will have clear guidance in every situation. Standard 1.2.7 states, "A written directive governs the use of discretion by sworn officers."[52] Further commentary states, "The written directive should define the limits of individual discretion and provide guidelines for exercising discretion within those limits." It leaves to the agency to define what is the "limit of individual discretion." As long as there are guidelines, the agency has complied with the standard. Thomas and

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[47] Ibid., 73.
[48] Ibid., 88-89.
[49] Ibid., 91.
[50] Ibid.
[51] Commission on Accreditation for Law Enforcement Agencies (CALEA), http://www.calea.org.
[52] CALEA, *Standards for Law Enforcement Agencies*, 4th Edition, (Fairfax: CALEA, 1998), standard 1.2.7. See also standard 1.2.6 for use of alternatives to arrest.

Fitch want something more than the compliance required by this standard. That will probably never occur, at least to the extent that they describe should happen. Their focus is well-intentioned but naïve if they believe any set of rules can cover every situation. It might be possible to set up some rules that would cover most cases. The problem is not quite so simple when unique variables come into play. This is where Dewey's ideas on character become useful. If an officer is trained to meet ethical standards by following a set of rules, he will have a difficult time when he encounters a situation that does not fall within the purview of these rules. If the officer is instead trained to judge the pertinence of a rule to a particular situation, he will have the wherewithal to know when it would be wise to deviate from that rule. At least one department addresses this issue by allowing deviations from policy where an officer has an articulable reason to do so:

> While providing guidance and direction through written policy and procedure, it is also realized that individuals must be allowed a certain amount of discretion in order to adjust to unusual and/or unpredictable situations. With this in mind, it is therefore the objective of this policy and procedure manual to provide the guidance necessary for employees to effectively carry out their duties while at the same time allowing for personal discretion in certain situations.[53]

This policy also states, "Personal discretion should be used when it is obvious that prescribed procedures will not accomplish the desired results."[54] Both these statements allow an officer to deviate from set policies or procedures to accomplish a certain consequence. Dewey would be pleased by this flexibility.

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[53] College Station Police Department, *Policy Manual*, "Chapter 1-Introduction" (College Station, Texas: City of College Station, 2003), 1-1.
[54] Ibid.

CHAPTER V

COMMUNITY AS PARTICIPATORY AND INCLUSIVE

Dewey's ideas about what constitutes the "public" and government are strongly related to current law enforcement practices. Dewey does not mention law enforcement specifically, but instead addresses problems within government as a whole. Nonetheless, law enforcement has many examples that support his ideas. A quote from Dewey outlines the problem:

> No government by experts in which the masses do not have the chance to inform the experts as to their needs can be anything but oligarchy managed in the interest of a few. And the enlightenment must proceed in ways which force the administrative specialists to take account of the needs. The world has suffered more from leaders and authorities than from the masses.[1]

Dewey points out ways in which government fails to be responsive to the public it serves and how this failure can be overcome. Law enforcement's history has examples of Dewey's worry about how the "experts" are not responsive to the public, one being the non-responsiveness problems created by the professional style of policing.[2] When using the professional style, police often equate discretionary power with independence, as if the criminal laws they enforce come from some independent source laid down for the masses, forgetting that it was those very masses that caused the laws to be enacted. For

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[1] John Dewey, *The Later Works, 1925-1953*, ed. Jo Ann Boydston, vol. 2: *1925-1927*, "The Public and Its Problems" (Carbondale: Southern Illinois University Press), 365.

[2] "The height of police isolation came in an era of growing professionalism, when the prevailing ideology was that the professional knew best and when community involvement in crime control was seen by almost everyone as unnecessary." *Understanding Community Policing*, Community Policing Consortium (Washington D.C: United States Department of Justice) Chapter 2, http://www.communitypolicing.org.

Dewey, discretionary power is to see that justice is done. No set of rules can cover every situation. He states,

> The regulations and laws of the state are therefore misconceived when they are viewed as commands. The "command" theory of common and statute law is in reality a dialectical consequence of the theories, previously criticized, which define the state in terms of an antecedent causation, specifically of that theory which takes "will" to be the causal force which generates the state.[3]

Discretionary powers are necessary if the police are to have the flexibility to address new problems as they arise. These powers should be used in a manner that will serve justice best. Discretion allows for rules to direct officers' actions when are unsure what we want the consequences to be, but allows for different actions when we know the desired consequences answers and the rules do not give us the best way to gain these consequences.

This chapter will identify the relationships between Dewey and the various contemporary law enforcement styles and how they involve participation and inclusiveness. Much of the contemporary writings about community policing have the same thoughts and arguments that Dewey put forth. The tumultuous 1960's and 1970's brought to the forefront that the "professional" style the police were using would not continue to work.[4] The ideas and strategies that resulted from trying to find ways to overcome these problems could serve as primers for Dewey's ideas. Community policing was a response to this problem that came only after an outcry by the public for change. The public's reaction to incidents such as riots, increased crime, and Supreme Court

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[3] Dewey, *The Later Works, 1925-1953*, vol. 2: *1925-1927*, 269.

[4] "Researchers have suggested that the reform era in government, which began in the early 1900's, coupled with a nationwide move towards professionalism, resulted in the separation of the police from the community." *Understanding Community Policing*, Community Policing Consortium, Chapter 2.

decisions condemning how police were performing their duties forced police to take account of their practices.

It will also be demonstrated that Dewey's ideas not only support the use of proactive styles of policing (such community policing or problem solving) but also support the use of reactive styles of policing (such as traffic enforcement and O.W. Wilson's standardized patrol deployment). Limiting the approach to problems confronting law enforcement is to fail to recognize the need for flexibility. A police department that fails to acknowledge that community policing is useful limits its ability to solve problems, just as a department that uses only a community policing approach fails to demonstrate the flexibility to solve certain problems. Further, none of these styles operate in isolation. There are elements of each of the styles in any police action taken.

The first problem with identifying community policing with Dewey is obtaining a generally accepted definition. The Texas Law Enforcement Management and Administrative Statistics Program (TELEMASP) identifies several forms of community policing.[5] These include community resource officers, problem projects, school resource officers, D.A.R.E.[6] officers, foot patrols, store front offices, and bicycle patrols. The variety of methods to employ "community policing" demonstrates the lack of a clear definition of what community policing really is.[7] For example, "store fronts" are offices usually located in high density areas that allow officers to be accessible to the community. "Problem projects" is another name for problem oriented policing (POP), a

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[5] Police Research Center, "Neighborhood Deployment-Conceptual Issues," *TELEMASP Monthly Bulletins*, Vol. 10 (September/October 2003): 2.
[6] Drug and Alcohol Resistance Education.
[7] To date, no succinct overview of community policing exists for practitioners who want to learn to use this wide-ranging approach to address the problems of crime and disorder in their communities." *Understanding Community Policing*, Community Policing Consortium (Washington D.C: United States Department of Justice) Chapter 1, http://www.communitypolicing.org.

method of problems solving similar to Dewey's ideas on the subject of problem solving. It may be that a community expects patrol officers to perform their duties using the professional model at the same time they want to also have community policing programs such as school resource officers and bicycle patrols. There is one theme that does appear in all of the forms of community policing as stated in the TELEMASP bulletin, that being that, "community policing has as its foundation the concept that police agencies establish numerous linkages to communities, however defined, and tailor programs to citizen desires."[8] A similar definition by the Community Policing Consortium states, "Community policing consists of two complementary core components, *community partnership* and *problem solving*."[9] Each of these definitions reaches towards inclusiveness and participation of the public in guiding the actions of the police.

To add confusion to the issue of defining community policing, there are three basic models used to put community policing into practice in a patrol division.[10] These are the "overlay," "every officer," and "beat team" models. In the "overlay" model, a department assigns specialist officers to engaging in "structured community contact" and "problem solving." In the "every officer" model, it is assumed staffing levels are "sufficient that officers can not only meet the responsibilities for responding to calls for service and proactive enforcement, but also engage in structured community contact and problems solving." The "beat team" model is where, "A group of officers is assigned to a geographic subdivision with 24/7 responsibility." This team is responsible for all the services in that area, including patrol services, community contacts and problem solving.

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[8] Police Research Center, "Neighborhood Deployment-Conceptual Issues," 2.
[9] Community Policing Consortium, *Understanding Community Policing*, Chapter 3.
[10] Police Research Center, "Neighborhood Deployment-Conceptual Issues," 5.

The problem with defining community policing demonstrates Dewey idea that nothing operates in a vacuum. He states, "Singular things act, but they act together. Nothing has been discovered which acts in entire isolation."[11] Community policing of any sort cannot be the sole method police use to respond to the publics needs. Regular patrol deployment has to continue, even in departments that have embraced community policing as their model for operation. No amount of proactive activities can prevent all crime and there is still a need to have the ability to react effectively.

Directly connecting community policing to Dewey would probably be impossible. We can demonstrate that many of his ideas have been incorporated into its implementation. To do so there are some things we must make clear, the first being just what he means by "community." Dewey clearly states there are no individuals, that everyone operates with some kind of support from others.[12] We are all members of some community and often are members of several communities.[13] These conditions are support for Dewey's definition of a community: "a community as a *whole* involves not merely a variety of associated ties which hold persons together in diverse ways, but an organization of all elements by an integrated principle."[14] For law enforcement, they must identify the variety of "communities" they serve and discover how these communities (including the police as one of these communities) are parts of an "integrated principle."

Community policing relates to Dewey through the idea that input for police activities (or for that matter, all government activity) must come from *all* the various

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[11] Dewey, *The Later Works, 1925-1953*, Vol. 2: *1925-1927*, 250.
[12] "Associated or joint activity is a condition of the creation of a community." *The Later Works, 1925-1953*, Dewey, Vol. 2: *1925-1927*, 330.
[13] "A man may be one thing as a church member and another thing as a member of the business community." Ibid., 354.
[14] Ibid., 259.

communities they serve.[15] Inclusiveness can be a great crime reducer[16] and how that inclusiveness can occur is through communication.[17] Dewey emphasized the participation in the processes of government is what is needed for that government to be representative of its citizens.[18]

As mentioned to earlier in this chapter, there are two basic approaches to police work; reactive and proactive. The reactive style is generally identified with the professional model of policing but is not the sole form of reactive policing. In the professional model, patrol assignments are determined by reviewing calls for service and establishing beats to even out call loads. The thought is that by evening out workloads, the most efficient use of manpower is achieved, creating the opportunity for an officer to be available for an emergency and to provide time for preventative patrolling. In this model the main emphasis is availability for calls, that is, the ability to react quickly. This is not to say there are not times a patrol officer will not provide proactive enforcement. For example, an officer working a beat could use a POP solution to a series of burglaries in his/her beat by looking for a pattern and attempting to match his/her patrol routine to find the burglar. This focus can result in a reduction of crime in that beat due to the diligence of that officer. This could also be a group of officers working either the same beat or in the case of smaller cities, city-wide.

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[15] "Representative government must at least seem to be founded on public interests as they are revealed to public belief. The days are past when government can be carried on without any pretense of ascertaining the wishes of the governed." Ibid., 348.

[16] "A series of antecedent social conditions lead to changes in perception of self and others, and thereby to a lowered threshold of normally restrained behavior." "The Human Choice: Individuation, Reason, and Order versus Deindividuation, Impulse, and Chaos." Philip Zimbardo, in *Nebraska Symposium on Motivation*, Vol. 17, ed. William J. Arnold and David Levine, 251 (Lincoln: University of Nebraska Press, 1969).

[17] "The perfecting of the means and ways of communication of meanings so that genuinely shared interest in the consequences of interdependent activities may inform desire and effort and thereby direct action." *The Later Works, 1925-1953*, Dewey, Vol. 2: *1925-1927*, 332.

[18] "Only through constant watchfulness and criticism of public officials by citizens can a state be maintained in integrity and usefulness." Ibid., 278.

Another example is detective work, which is usually done in a reactive manner. A crime is committed, a report is taken by a patrol officer, and if there is enough evidence, the case is assigned to a detective for follow-up work. However, there are times when detectives use proactive methods. For example, when a pattern of crimes is discovered, a detective will often spread the scope of his or her investigation to cover areas that may not have been reported to a patrol officer by victims of a crime.

It should also be understood is that not all crime is preventable and at times the police *must* operate in a reactive manner such as when an assault that occurs due to a non-criminal act. For example, a man finds his wife in bed with another man and shoots him. The police cannot be expected to prevent this crime but they are expected to investigate it and bring the culprit to trial.

The reactive style also tends to deal with crime separate from other issues. Police officers do not want to become social workers or representatives of other governmental departments; they signed up to fight crime. They do not want to hear that a problem is complicated and that there are several factors (many of them outside the realm of police work and beyond their ability to deal with directly) that influence how a problem comes to be. They want to single out and focus on the things they are experienced in and use the techniques they were trained to use. The strength to this approach is that the police do not have people who are not trained in performing social work trying to do that type of labor. With this approach the social work is left to the agencies that are responsible for that duty.

This style also has a tendency to operate in a top-down manner. Supervisors on high tell their subordinates, who tell their subordinates, who tell the line officers what to

address. This has at least the appearance of doing the will of the people; a citizen calls an elected official who calls the city manager who tells the chief of police on down to the street officer. This centralized command is the most effective way to operate when there is a major crisis that requires a large response force. When in the midst of a riot or when a tornado hits a community, a central control of activities[19] has a history of being the best way of getting the resources to where they are needed with minimal duplication of efforts, prioritizing activities or establishing schedules of work.

A further trait is that this style tends to be rule-based and reaches its most efficient (and usually effective) point when it controls the each act of every officer. If a department has a strong, central control of officer behavior, then it follows that the behavior of the officers is what the administration intended. Many may identify this style as supporting civil rights violations but this is not the case if officers follow one of the things they are sworn to do in the first place; defend the Constitution of the United States.[20] Every oath of office for law enforcement officers includes defending the Constitution as part of that oath. It would follow that if the policy of a department was written so as to cover this and each officer was held to this standard, civil rights violation would not be an issue. The strength here is that the department operates independent of outside influences since it operates through policy rather than the population's desires. If the rules are set up right, then political influences tend to have a much lesser effect on the acts of a department.

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[19] This has been recently described as an "incident command system", and was used in the Oklahoma bombing incident and the 9/11 plane crashes. As is typical in major crisis' both incidents were marked with initial pandemonium with order being restored as the command system was put in place. It basically identifies and prioritizes tasks (e.g. rescue of survivors first, preservation of evidence second). It also allows for a smoother transition from rescue scene to crime scene as the investigation progresses.

[20] It should be understood that a proactive style will also defend the Constitution, an example of how neither style is exclusive of the other.

Proactive policing has its strength in attempting to prevent crime from occurring. The various forms of community policing are all examples of proactive policing, their goal being the identification of potential problems or problems that are small in scale and addressing them before they become larger or unmanageable. For example, school resource officers develop relationships with students, giving the police the opportunity to explain why they do things certain ways, and an understanding of the students (as a groups within society). Store front offices and community officers essentially do the same thing, only in neighborhoods or business districts. Bicycle and foot patrols also offer easier accessibility to police, thus creating an increased potential for relevant communication to occur.

A common theme within any of the forms of community policing is that the community involvement, inclusiveness and participation, is the focus of the officers' activities. There are some constraints, such as legal requirements for police actions, but most times the desires of various communities within a department's jurisdiction fall well within the outside restraints (penal code, court rulings) placed upon officers. The decision making for an officer's activity is decentralized. A neighborhood (or other group outside the department) is allowed to help decide the focus of an officer's activities.

Proactive policing is not limited to community policing models. Not every problem can be solved by communications between the public and the police. There are elements of the community that do not want to find a way to solve differences. These types require police to take action that does not involve interaction to understand their standpoint. Those that prey upon the weak, such as pedophiles, do not want to find a

middle ground that will satisfy all involved. Their actions upon children often have a lasting effect, precipitating the need to find them before they strike.

To sum up the two styles, reactive policing tends to have a centralized command. It focuses on solving cases, and tends to be rule-oriented. Proactive policing tends to be decentralized; it seeks long-term solutions and is more concept oriented rather than rules oriented. The strength of the reactive style is that it operates well in a major crisis and controls the behavior of officers very closely. Its weaknesses are that it tends to approach problems from a solely law enforcement point of view and does not adapt as well to changes. The strengths of the proactive style are that it adapts well to change and is more responsive to neighborhood desires. Its weaknesses are that it ill prepares officers for crisis situations and can fail to control problems that cross neighborhood lines.

The weaknesses and strengths listed denote when a particular style is most effective and when it is practical to use a particular one. Neither style can be totally separated from the other for all activity is based upon experience (basis for a reactive response). We cannot figure out what proactive actions to take without having some experiences to give us a reason to believe the proposed action will be the correct one. In other words, proactive actions are reactions to past experiences but have an added characteristic of predicting future behavior.

Most departments operate with a balance between the two styles. The police can never fully go to one style or the other because to do so is to create a recipe for failure. If police use strictly reactive policing, they can never get to a point where they have prevented a crime from happening. If they use strictly proactive policing, problems that police have no way of knowing would happen will not be dealt with effectively. Even if

both styles have their time and place, it is often the case that one style is more effective than the other as the more commonly used style for a particular police department. It is imperative that the department makes it clear which style is considered predominant. If officers are not clear on how to act (which style is predominant) they will not have a foundation to work from, one that establishes what is expected and what are the boundaries of behavior.

Police departments should remember that the community needs to be included when deciding a predominant style. The police will be viewed as ineffective if the community clamors for a style based on the professional model and the police use a community policing style. The police will also be viewed as ineffective if they use a professional style when the public clamors for a community policing model. Deciding which style is the correct one to use at a particular time is based upon the situation at hand. It is not that one style is better than another. It is more a matter of finding which one is appropriate for the problem at hand. In other words, neither style is replacement for the other. Both must be considered an appropriate style under the right circumstances. The decision can be complicated by other seemingly non-related issues and by the fact that most problems are not solved by solely using one style or the other. An example of using this type of thinking is demonstrated in the problem oriented policing (POP) form of community policing, [21] also called the SARA (Scan, Analyze, Respond and Assess) model.[22] The SARA model emphasizes reviewing a particular problem to identify various solutions, followed by an analysis of which solution would be the best for that particular

[21] Law enforcement has taken a page from the military in the widespread use of acronyms.
[22] W. Spelman and J. E. Eck, *Newport News Tests Problem-Oriented Policing*, (Rockville: National Institute of Justice, 1987).

problem. This type of thinking can be applied on a larger scale to things like deployment of officers or which policing model to use.

Proactive policing is at its best when a problem is in its infancy. It tries to identify a problem and address it before it becomes a bigger one. This is best explained by the "broken window"[23] theory:

> A building in an area is unoccupied and is allowed to come into disrepair. People living in this area see the deterioration and move to another area that is in better repair. Others move in that do not care about the deterioration of the neighborhood and soon all the people of a good nature than can have moved out and many of those that cannot move out become prey on the new less savory residents.

This theory demonstrates the need for intervention as early as possible. Many small issues never become big ones if they are addressed early. If the deterioration is stopped at an early stage, then the fleeing by the good people in the neighborhood does not occur. But the problem is not always as easy as this. It is one thing to see a broken window and have the owner held accountable for keeping his/her property in good repair. It is another thing if the issue causing the deterioration is less obvious. This is where communication, community involvement, makes the difference. The police will not know what is in need of repair unless they are told by that particular community. Dewey identified this problem: "Psychiatrists have discovered that one of the commonest causes of mental disturbance is an underlying fear of which the subject is not aware, but which leads to withdrawal from reality and to unwillingness to think things through."[24] There may be things perceived as a problem but once brought to light, or are explained, they become less threatening.

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[23] Paraphrased from an article by James Q. Wilson and George L. Kelling, "Broken Windows: the Police and Neighborhood Safety," *Atlantic Monthly*, March 1982, 29-38.
[24] Dewey, *The Later Works, 1925-1953*, Vol. 2: *1925-1927*, 342.

So we are still reacting to a problem rather than preventing it even if we are doing so in the infancy of the development of the problem. We also have to rely on past experience to identify what problems are real or as Dewey would say, truer,[25] and what ones are merely misunderstandings. This is where Dewey's statement on communication becomes important. First, he states that communication is necessary for a person to be a member of a community. Second, he feels this interaction should be continuous.[26]

The prior examples focus on police activity. The community is an integral part of any efforts in this manner and the focus should not be on community *policing* but on *community* policing. Community policing is a matter of *all* affected communities participating in the process of deciding on actions for the police to take. Dewey makes this clear in his statement,

> That "yesterday and even since history began, men were related to one another as individuals" is not true. Men have always been associated together in living, and association in conjoint behavior has affected their relations to one another as individuals.[27]

For either style of policing (proactive or reactive), this means that the more individual and group participation occur, the better the policing can reflect what a community wants. It is still imperative that the police are careful in how they filter what they receive. Just because representatives of a neighborhood ask the police to take care of a problem in an illegal or unethical manner does not mean that the problem they want to be dealt with is not an important one. For example, in my community of College Station, Texas, there is a poorer section of town that had a community group come forward to ask for focus on

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[25] "The content of the latter experience cognitively regarded is doubtless *truer* than the content of the earlier; but it is in no sense more real." *John Dewey: The Middle Works*, Dewey, Vol. 3: *1903-1906*, 161.
[26] "To learn to be human is to develop through the give-and-take of communication an effective sense of being an individually distinctive member of a community;…But this transition is never finished." *The Later Works, 1925-1953*, Dewey, Vol. 2: *1925-1927*, 332.
[27] *The Later Works, 1925-1953*, Dewey, Vol. 2: *1925-1927*, 295.

some drug dealers. Some of the members of this group suggested the police "get tough" with the drug dealers and they would support the police in their actions. The problem was that there happens to be a Constitution and state laws that outline how the police are to deal with criminals. The public should not be duped into believing television shows that portrayal officers operating regularly outside the law. There are some very severe consequences for doing so. Once it was explained that if this behavior was condoned to control a select few, officers could interpret that to mean that it would be agreeable for them to do that to anyone that did not "fit" in a neighborhood. This did show the citizen's request in a different light and they opted for a plan of action that was within the law.

The public is not without responsibility in this mix. Low voter turn-out, particularly in local elections, demonstrates the apathy many communities have taken towards government. Dewey notes our fascination for new mechanical devices[28] but our reluctance to examine new ideas. He states, "When novelties take the form of mechanical devices, we incline to welcome them,"[29] then goes on to say, "The organized community is still hesitant with reference to new ideas of a non-technical and non technological nature."[30] If the public is not willing to examine problems, both new and old, and seek better solutions, any attempt by the police to address problems at its root cause will have little chance of long-term success. A summary of a study by the Texas State Demographer, Steve H. Murdock and his associates, *A Summary of the Texas Challenge in the 21st Century: Implications of Population Chance for the Future of Texas*, identifies one example where apathy can have a disastrous result. The summary projects a population of Texas that is generally older with an older Anglo (white, non-Hispanic) and

[28] Dewey stated "mechanical" devices, but this fascination applies just as well to computer devices.
[29] Dewey, *The Later Works, 1925-1953*, Vol. 2: *1925-1927*, 272.
[30] Ibid.

younger Black and Hispanic.[31] It also notes that at the current rate of socioeconomic status (that being that Blacks and Hispanics are generally poorer and less educated) the state will be increasingly poor and less educated particularly since the Hispanic population is expected to grow tremendously.[32] They also identify how this influences health care and housing.[33] A generally older Anglo population will be needing care from a younger Hispanic and Black population. A less educated population will mean the opportunities for jobs will be less, thus creating the potential for increased crime.

This example also demonstrates the interrelatedness Dewey describes. If we do not educate our population, no matter what race or ethnicity, we will experience an increase in crime. It also demonstrates what can occur if we do not take action to change our current course. There are those that would balk at providing a less costly educational system. The problem with this thinking is that it does not take into account the consequences. If Texas does not educate its population, it will have to pay for more prisons to hold all the criminals.

I would like to make a historical side-note at this time, that being how the SARA model also has an underlying thread connecting to Dewey. In a report to the National Institute of Justice by William P. Brown, William C. Trigg III, and Nelly Brown titled *Task-Focused Policing*,[34] the authors used Dewey's idea of applying logic to problem solving as the basis for their suggestion of how police could identify and find solutions to problems. They simplified the system Dewey outlined in his treatise, *Logic: the Theory of*

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[31] Steve H. Murdock, et al., *A Summary of the Texas Challenge in the 21st Century: Implications of Population Chance for the Future of Texas*, (College Station: Texas A&M University, December 2002), 9.
[32] Ibid., 28.
[33] Ibid., 40-42.
[34] William P. Brown, William C. Trigg III, and Nelly Brown, *Task-Focused Policing*, (July 1981), I-10.

Inquiry.[35] Trigg later distilled these steps in his dissertation, *The Police and Vandalism*.[36] He outlined 5 basic steps:

1. Defining the problem (which includes data collection and analysis)
2. Determining a solution or response to the problem
3. Implementing and testing the response
4. Evaluating the response
5. Using the evaluation results to conform, modify, or change hypotheses about the nature of the problem and/or the response.[37]

The similarity is amazing. With the exception that the SARA model combines the 4th and 5th steps listed in Trigg's outline, they are virtually the same. The original report by these author's was panned rather bluntly by some of the experts in the law enforcement field, one being James Q. Wilson. It is interesting to note that Wilson was one of the original progenitors of the "broken windows" theory, which led to the development of problem-oriented policing and the SARA model. This might be the "missing link" that connects Dewey to current policing practices, but it would take an admission by Wilson that, at least in part, his ideas about how policing needed to change were influenced by these three authors' writings. Even if the connection is not made, the convergence is uncanny.

This chapter has covered some of the issues of participation and inclusiveness and other related aspects. The projection by Murdock points out the need to include all of the public when providing for education. It also demonstrates the need for those that are included to participate in obtaining an education. The strength and weaknesses of the different policing styles (reactive and proactive) identified the need for inclusion of the community in deciding when and where each style should be applied. For example, there are times we want professionalism to show through. If someone assaults us, we want to

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[35] John Dewey, *The Later Works, 1925-1953*, Vol. 12: *1938*, 3-527.
[36] William C. Trigg III, *The Police and Vandalism: A Study of Task Problem Definition and Response Formulation in Police Work*, (Ann Arbor: University Microfilms International, 1984).
[37] Ibid., 12.

know the police will take action to stop the attacker and bring him to justice. The police are expected to represent stability, a benchmark if you will, which is often identified as professionalism. But officers must not appear to be aloof. The public expects the police to reflect upon their actions even as they do things 'by the book.' If they are too strict in applying the laws, they lose credibility with the public. The public clamors for an officer that is not *too* professional. Rather than an independent entity enforcing laws from on high, the police must include the community in deciding enforcement. The police still must follow the laws laid down by the legislative bodies, but the *priorities* are set at a local level.[38]

Inclusion is required of all those concerned if the police are to gain acceptance of their actions. Gaining this acceptance starts with communication: "Communication can alone create a great community."[39] However, without participation, communication serves little purpose. Talk is cheap if not backed up by action.

[38] "The man who wears the shoe knows best that it pinches and where it pinches, even if the expert shoemaker is the best judge of how trouble is to be remedied." *The Later Works, 1925-1953*, Dewey, Vol. 2: *1925-1927*, 364.
[39] Dewey, *The Later Works, 1925-1953*, Vol. 2: *1925-1927*, 324.

CHAPTER VI

CONCLUSION

Throughout history, mankind has changed its perception of what it considered knowledge. The belief that the earth was flat, that blood letting would remove disease, that the earth was the center of the universe, and the discovery of quantum mechanics are all examples of this. To make things even more confusing, some things that were believed before and later found to be false were even later found to be correct. For example, at one time it was believed that people suffering from heart disease should eat a high-carbohydrate, moderate-protein, low-fat diet. Items high in fats such as nuts and avocados were considered unhealthy right along with saturated fats in foods like bacon. This has changed and now cardiologists are advocating a high-protein, low-carbohydrate, moderate-fat diet. The nuts and avocados that were considered unhealthy before are now believed to aid in the prevention of heart disease. The carbohydrates were broken down further into two basic groups. Those coming from vegetables are considered good, those coming from sugars and starches are considered bad. New information has changed the perception of what was considered a healthy diet. Adding to this confusion was the issue of who developed the diet pyramid (congressmen), just as Dewey noted that knowledge can be influenced by social settings. The point is that we are in a constant state of flux when it comes to knowledge. There is an ebb and flow to what we claim as knowledge. Just as the notions of whether fats are good or bad for cardiac health, so too, does the knowledge we claim about topics in law enforcement change.

There are also times when an incomplete form of measuring does the best to explain what is happening. Quality science demands that measuring be done within limited parameters even if we must, at times, sacrifice completeness for clarity. If we do not establish limitations for our measurements, we will be overwhelmed by the sheer number of variables that exist in any given situation. To claim knowledge about something is to measure what we claim as knowledge against something else. The belief that we have found an ultimate answer to something is to state we are no longer looking at other possibilities. If I witness a crime, I will not 'see' everything that happened, even if I state that I did. My statement is more a claim that I saw all the *relevant* things that occurred during the commission of the crime. With evidence, I can establish an independent confirmation of my claim as to what happened, eliminating some of the possibility that my personal history influenced what I saw.

For example, more than once I have heard officers looking at a video of an incident they participated in state they did not remember the actions that they witnessed on the video. The same phenomenon occurs in high stress situations. There are cases where officers involved in shootings do not remember firing their pistol, being shot, or other certain time periods of the incident. They also experience the incident in slow motion and at high speed. The point here is that selective collection of information occurs whether or not we intend for this to happen. By controlling the selectivity, we establish a context from which to measure an incident. Recognizing that selectivity is a search for clarity and not as an absolute on what is measurable, allows us to remain open to finding unmeasured variables that later are discovered to be important. This does not mean that we do not try to account for as many variables as possible.

There could be a question as to whether Dewey was just stating what had occurred in history and claiming it as a philosophical stance or had actually identified a philosophical method. It is a bit of both. Dewey felt that methods of thinking are grounded in our experiences. Those of us who grew up in an Asian culture where community was important have different thinking processes than those who were raised in Western cultures where independent thought is more revered. The differences are not totally isolated. It is a matter of degree as to how much a predominate trait of one culture exists in other cultures. Although Western society prefers independence, at times, community is the center of an action. No matter how much Asian culture emphasizes community over individuals, there will be times that independent action is preferred. Total isolation does not exist in this world and Dewey's ideas are no exception. Dewey may have derived his ideas through experience and observation, but his ability to see patterns that aid in explaining how they are happening within the overwhelming influx of information makes him special.

Law enforcement is no different. The examples given in this thesis point out how Dewey's ideas converge with experiences in law enforcement. The four areas of convergence include how technology influenced law enforcement, learning as continuous, ethics and the use of discretion, and community as participatory and inclusive. The migration from the professional model to the community policing model, the identification of what is truer, and the use of discretion are examples demonstrating this convergence between Dewey and law enforcement practices.

The examples given in this thesis and Dewey's ideas are all interwoven in some manner. The migration from the professional model to the community policing model

demonstrates how what is considered knowledge changes, how we learn from experience, how technology influences learning and inclusion, and how participation and inclusion are ingredients for the success of law enforcement. Recognition of the possibility that the 'truth' can change demonstrated how learning is contextual, the use of discretion is a necessary element of policing, and how inclusion and participation reduces the amount of discrepancy between various interpretations of the 'truth.' The ethical application of discretion demonstrates how we need to understand variations in the 'truth' and how learning plays a big part in how well discretion is applied. One cannot address discretion fully without a reference to learning and inclusion.

Prior to being guided to read Dewey, I was intrigued by William James' *Stream of Thought*.[1] Although my early understanding of this theory was rudimentary at best, I felt there was something there that had an application to law enforcement. During that time, I tried to explain James' theory to a friend working as an attorney in my department's legal office. I was explaining why officers are often selective in what information they use when deciding to take action. My point was that there was a philosophical basis for this happening. As I explained the idea that there were all sorts of information coming to us that we elected to disregard, she asked that I stop explaining the theory to her as she was getting a headache. I apologized for not doing a good job of explaining James' theory, thinking I was boring her. She told me that it was the fact that I had explained it all too well that she was getting a headache. She told me I had caused her to try and recognize all the things that were going on in the room at the time and it had overwhelmed her. She could not focus on any one thing for fear she would lose track of something else going

[1] William James, *The Writings of William James*, ed. John J. McDermott (Chicago: University of Chicago Press, 1977), 21-74.

on. Her description of what was happening to her reminded me of the performer whose act is spinning plates. The plate spinner can only keep track of so many plates before he is overwhelmed by the sheer number. He cannot move fast enough to keep more than a certain number of plates moving.

My friend told me she liked just having to deal with what was right before her. My reason for explaining James instead of Dewey was I had not yet been exposed to Dewey. If I had, I might have given an explanation that would have been easier for her to absorb. That is the beauty of Dewey's writings. He uses language that is more familiar to what most of us use in everyday life. For Dewey and James, the basis for philosophy is as a guide to our actions, to enable us to strive to make things better. Dewey just makes it easier to understand.

Technology might be able to help us keep more of the plates spinning or allow us to move faster so that we can spin more plates. Peter Medawar addresses this in his book *The Limits of Science*. He answers a claim that science is limited because it is "so hugely voluminous that a scientist can no longer get his bearings in a voyage of discovery."[2] Medawar answers that the problem is essentially technological, for which, "adequate technological solutions are rapidly being found; computers like those used in the great microbiological extracting services such as *Excerpta Medica* of Amsterdam endow a medical scientist with an almost infinitely capacious exosomatic[3] memory with prompt and trustworthy powers of information retrieval."[4] Medawar's definition of technology does not include Dewey's idea that technology includes how we think. By Medawar's

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[2] Peter Medawar, *The Limits of Science* (Oxford: Oxford University Press, 1984) 70.
[3] Mendawar explains "exosomatic" as a form of extracorporeal functioning such as dialysis machines functioning as kidneys and ventilators functioning as lungs. He believes computers do the same thing for our brains.
[4] Medawar, *The Limits of Science*, 71.

definition, technology does not have the capability to reason. If we add Dewey's definition, a method exists from which to organize how we proceed with our thinking. Deciding which plates need spinning is the job and methods are needed to do so in a manner that is not arbitrary. Dewey offers his ideas as a way to overcome arbitrariness.

Using his own pragmatic reasoning, Dewey's ideas will some day be considered outdated. As we move through time, other ideas will come along to replace his. New and better ways of thinking will be discovered that do a better job of making sense of what we are experiencing and of finding ways to solve problems. No matter what happens, we can still be thankful to Dewey for being one who paved the way for this to happen. I, for one, have been enriched by not fearing (as much) the unknown, the different, the diverse, and the disparate. John McDermott points out clearly why it matters that we understand Dewey:

> Dewey evokes the deepest sentiments of human life, too often unsung and too often derided: that the nectar is in the journey, that the ultimate goals may be illusory, nay, most likely are but a gossamer wing. Day by day, however, human life triumphs in its ineluctable capacity to hang in and make things better. Not perfect, simply better.[5]

[5] John J. McDermott, *Streams of Experience* (Amherst: University of Massachusetts Press, 1986), 118.

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